

1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201(b), a new definition of *serious health condition* is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Serious health condition has the meaning given that term in § 630.1202.

* * * * *

Subpart D—Sick Leave

3. In § 630.401, the introduction to paragraph (a) and paragraphs (a)(3) and (b) are revised; paragraphs (c) through (e) are redesignated as paragraphs (d) through (f), respectively; a new paragraph (c) is added; and in newly designated paragraph (e), “(c)” is removed and “(d)” is added in its place wherever it appears to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee—

* * * * *

(3)(i) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition.

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the

average number of hours in his or her scheduled tour of duty each week) during a leave year, subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (a)(3)(ii) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, that amount must be subtracted from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition.

* * * * *

4. Section 630.403 is revised to read as follows:

§ 630.403 Supporting Evidence.

(a) An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as evidence administratively acceptable. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide required administratively acceptable evidence or medical certification within his or her agency's specified time period is not entitled to sick leave.

§ 630.405 [Amended.]

5. In paragraph (a), remove “(e)” and add in its place “(f),” and in paragraph (b), remove the last sentence.

* * * * *

[FR Doc. 00-2932 Filed 2-4-00; 4:26 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00-989-2 PR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services Performed Regarding Reserve Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on increasing, by approximately 15 percent, the compensation rate for handlers' services performed in connection with reserve raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). These changes are necessary to reflect current industry costs.

DATES: Comments must be received by April 10, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, 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, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, or Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal 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 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 the Secretary 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary 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 in equity to review the Secretary'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 invites comments on increasing the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. This rule would increase this rate from \$40 to \$46 per ton to reflect current industry costs. This action was unanimously recommended by the Committee on November 10, 1999. Additional payment for reserve raisins held beyond the crop year of acquisition would be increased from

\$2.00 to \$2.30 per ton for the first 3 months, and from \$1.03 to \$1.18 per ton per month for the remaining 9 months. This action was unanimously recommended by the Committee on January 13, 2000.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Proceeds generated from sales of reserve raisins are also used to support handler sales to export markets, which are generally lower-priced than the domestic market. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the Committee, in accordance with a schedule of payments established by the Committee and approved by the Secretary. Such compensation is paid by the Committee to handlers as soon as practicable after the end of the second quarter of the crop year (January) and quarterly thereafter. The crop year runs from August 1 through July 31. The order also requires that the Committee review this rate annually.

Section 989.401(a) of the order's rules and regulations specifies that handlers be compensated at a rate of \$40 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year. The Committee conducted a survey among handlers to obtain data on the current costs of receiving, storing, fumigating, and handling raisins. The survey showed that such costs ranged from about \$40 to \$71.50 per ton. After analyzing the survey, the Committee recommended that the compensation

rate provided for such services performed in connection with reserve raisins be increased from \$40 to \$46 per ton to reflect current industry costs. Paragraph (a)(1) of § 989.401 is proposed to be modified accordingly.

In addition, the Committee recommended that payment to handlers for reserve raisins held beyond the end of a crop year be increased by the same percentage (15 percent). Additional payment for reserve raisins held beyond the crop year of acquisition would be increased from \$2.00 to \$2.30 per ton for the first 3 months (August through October), and from \$1.03 to \$1.18 per ton per month for the remaining 9 months (November through July). Appropriate modifications are proposed to paragraph (b) of § 989.401.

This rule would also make a minor correction to paragraph (b) of § 989.401. That paragraph, which, as indicated above, specifies the additional payment for reserve raisins held beyond the crop year of acquisition, states such additional payment for months reflecting a crop year from September 1 through August 31. However, the order was amended in 1976 to change the crop year from August 1 through July 31. Thus, the first 3 months of the crop year should be August through October, rather than September through November, and the remaining 9 months of the crop year would be the period November through July. Accordingly, appropriate modifications are proposed to paragraph (b) of § 989.401.

Finally, this rule would make a conforming change to paragraph (c) of § 989.401 regarding rental payment on boxes and bins containing raisins held beyond the crop year of acquisition. Persons who furnish boxes or bins used for storing reserve raisins are compensated for the use of such containers. Section 989.401(c) currently reflects a crop year from September 1 through August 31 and should be modified to reflect the current August 1 through July 31 crop year. Appropriate changes are proposed to § 989.401(c).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. Thirteen of the 20 handlers have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have estimated sales less than \$5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Pursuant to § 989.66(f) of the order, this rule would increase the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. This rule would revise paragraphs (a)(1) and (b) of § 989.401, respectively, to increase the handlers' compensation for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year from \$40 to \$46 per ton, and increase such additional payment for reserve raisins held beyond the crop year of acquisition from \$2.00 to \$2.30 per ton for the first 3 months (August through October), and from \$1.03 to \$1.18 per ton per month for the remaining 9 months (November through July). These changes are necessary to reflect current industry costs. Conforming changes are also proposed to paragraphs (b) and (c) of § 989.401 to reflect the current August 1 through July 31 crop year.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the Committee. Net proceeds from sales of such reserve raisins are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins. Currently, handlers are compensated at a rate of \$40 per ton for reserve raisins acquired during a particular crop year. For example, for the 1997–98 crop year, about 130,000 tons of raisins were held in reserve, and handlers were compensated a total of about \$5.7 million from the 1997–98 reserve pool. A Committee survey showed that handler costs regarding reserve raisins has increased in recent

years and that handlers have been absorbing these costs. Increasing the \$40 per ton fee to \$46 per ton for reserve raisins acquired during a particular crop year would more appropriately reflect the costs incurred by handlers and thereby reduce net proceeds to equity holders. There should be no disproportionate impact of this proposed action on small entities. Costs are allocated to equity holders based on their proportionate share of raisins in the reserve pool. In addition, this cost is incorporated into the price of reserve raisins that are sold to handlers for free use. Thus, the reserve pool is ultimately reimbursed for some of this cost.

Other alternatives to the proposed rates were considered by the raisin industry prior to the Committee's recommendations. The Committee's Administrative Issues Subcommittee met on November 9, 1999, and considered rates of \$44 and \$50 per ton for services performed in connection with reserve raisins acquired during a crop year. Ultimately, the Committee concluded that the proposed \$46 per ton rate for services performed during the year of acquisition, and comparable rates for the succeeding crop year, were appropriate.

This proposed rule would increase the compensation rate for handlers' services regarding reserve tonnage raisins. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's Administrative Issues Subcommittee meeting on November 9, 1999, and the Committee meetings on November 10, 1999, and on January 13, 2000, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab/html>. Any questions about the

compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.401, paragraphs (a)(1), (b), and (c) are revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition.*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of \$46 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Committee during all or any part of the same crop year.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of \$2.30 per ton per month, or any part thereof, between August 1 and October 31, and at the rate of \$1.18 per ton per month, or any part thereof, between November 1 and July 31. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing

reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of \$1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of \$10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds and *bin* means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

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Dated: February 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00-2980 Filed 2-8-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. FHWA-99-6232]

RIN 2125-AE68

Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulation prescribing policies, procedures, and reimbursement provisions for the adjustment and relocation of existing utility facilities, and for the accommodation of new utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. These amendments will bring the FHWA's utilities regulation into conformance with recent laws, regulations, or guidance, and will provide State transportation

departments (STDs) clarification and more flexibility in implementing it.

DATES: Comments in response to this NPRM must be received on or before April 10, 2000.

ADDRESSES: Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets Room, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, (202) 366-4104, Office of Program Administration, HIPA-20, or Mr. Reid Alsop, (202) 366-0791, Office of the Chief Counsel, HCC-31. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

Present FHWA regulations regarding utility relocation and accommodation matters have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The present regulations are found in 23 CFR part 645. Subpart A of this part pertains to utility relocations, adjustments, and reimbursement. Subpart B pertains to the accommodation of utilities.

The utility regulations were revised on May 15, 1985, when a final rule was published in the **Federal Register** at 50 FR 20344. Three significant changes have occurred since then, on February 2 and July 1, 1988, when amendments

to the regulation were published at 53 FR 2829 and 53 FR 24932; and on July 5, 1995, when a final rule was published at 60 FR 34846. The February 2, 1988, amendment provided that each State must decide, as part of its utility relocation plan, whether to allow longitudinal utility installations within the access control limits of freeways and if allowed under what circumstances. The July 1, 1988, amendment clarified that costs incurred by highway agencies in implementing projects solely for safety corrective measures to reduce the hazards of utilities to highway users are eligible for Federal-aid participation. The July 5, 1995, amendment raised the upper limit for FHWA forgoing preaward review and/or approval of consultant contracts for preliminary engineering from \$10,000 to \$25,000; increased the ceiling for lump sum agreements from \$25,000 to \$100,000; clarified the methodology to be used to compute indirect or overhead rates; required utilities to submit final billings within 180 calendar days following completion of the work; brought the definition of "clear zone" into conformance with the American Association of State Highway and Transportation Officials (AASHTO) "Roadside Design Guide"; and conformed the utilities regulations to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914.

The proposed amendments would change the regulation as follows:

- Eliminate the \$100,000 upper limit for lump-sum agreements.
- Allow reimbursement for labor surcharge, material, and supply costs to be based upon unit costs, as well as average costs, in lieu of actual costs.
- Apply the utility regulations to facilities similar to utilities, *i.e.*, facilities, such as wireless telecommunications towers, that are included in the definition of utility and are considered to be utilities by many, but not all, of the States.
- Suggest the Federal share of net income from revenues obtained by STDs for utility use of highway rights-of-way on Federal-aid highway projects be used by the State for projects eligible under title 23, U.S.C.
- Clarify the intent of the regulations that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways.
- Set forth as the most important consideration in determining whether