

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 792

RIN 3206-A193

#### Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Technical amendment.

**SUMMARY:** This document contains three technical amendments to the final regulations that were originally published in the *Federal Register* on Tuesday, March 14, 2000. The first technical amendment expands the type of funds that can be used for assisting lower income Federal employees with their costs of child care to include appropriated funds used for expenses in addition to salaries. The second and third amendments extend the legislation through the end of FY 2001. These changes were enacted by Public Law 106-554, sec. 633 of the Treasury and General Government Appropriations Act, 2001, and the effective date is October 1, 2000.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pat Kinney, (202) 606-1313; FAX (202) 606-2091; or e-mail to [pfkinney@opm.gov](mailto:pfkinney@opm.gov).

**SUPPLEMENTARY INFORMATION:** Public Law 106-58, sec. 643, enacted on September 29, 1999, allows Executive agencies to assist their lower income Federal employees with the costs of child care. Agencies could use "appropriated funds (otherwise available to such agency for salaries) to provide child care, in a Federal or leased facility, or through contract, for civilian employees of such agency." The Office of Personnel Management issued regulations to implement the new

authority, which were published in the *Federal Register* on March 14, 2000. The law was effective until September 30, 2000.

The current legislation expands the authority by authorizing the use of appropriated funds for expenses, in addition to appropriated funds available for salaries. It also extends the legislation until September 30, 2001.

#### Regulatory Flexibility Act

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

#### Lists of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is amending 5 CFR part 792 as follows:

#### PART 792—AGENCY USE OF APPROPRIATED FUNDS FOR CHILD CARE COSTS FOR LOWER INCOME EMPLOYEES

1. The authority citation for part 792 continues to read as follows:

**Authority:** Sec. 201 of Pub. L. 91-616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2(b)(13) of Pub. L. 98-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92-255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Services Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S.C. 290ee-1); Sec. 643, Pub. L. 106-58, 113 Stat. 477; Sec. 633, Pub. L. 106-554.

2. Amend § 792.207 by revising it to read as follows:

#### § 792.207 Which agency funds can be used for the purpose of this law?

You are permitted to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries and expenses.

3. Amend § 792.230 by revising it to read as follows:

#### § 792.230 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made

and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2001. These funds are not available to pay for services performed after September 30, 2001.

4. Amend § 792.234 by revising it to read as follows:

#### § 792.234 For how long is the law effective?

The law is effective for one year, ending September 30, 2001.

[FR Doc. 01-173 Filed 1-3-01; 8:45 am]

BILLING CODE 6325-01-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV01-989-1 IFRA]

#### Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2001 Diversion Program

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

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

**SUMMARY:** This rule reduces the production cap for the 2001 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.5 tons per acre. The cap is specified 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 (RAC). Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates for reserve raisins from the RAC. The Production cap limits the yield per acre that a producer can claim an an RDP. Reducing the cap for the 2001 RDP will bring the figure in line with anticipated 2001 crop yields.

**DATES:** Effective January 5, 2001. Comments received by January 19, 2001, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: [moab.docketclerk@usda.gov](mailto: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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior 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, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, 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, P.O. Box 96456, room 2525-S, Washington DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, 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 (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, 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. Such 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 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 reduces the production cap for the 2001 RDP for NS raisins from 2.75 to 2.5 tons per acre. The cap is specified in the order. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates for reserve raisins from the RAC. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2001 RDP will bring the figure in line with anticipated 2001 crop yields. This action was recommended by the RAC at a meeting on November 29, 2000.

#### **Volume Regulation Provisions**

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 (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

#### **Raisin Diversion Program**

The RDP is another program concerning reserve raisins authorized

under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Such producers curtail their production by vine removal or some other means established by the RAC and receive a certificate from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the reserve pool in an amount equal to the tonnage represented on the diversion certificate.

#### **Production Cap**

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in an RDP. When the diversion tonnage is announced, the RAC may recommend, subject to approval by the Secretary, reducing the 2.75 tons per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in an RDP.

Pursuant to § 989.156, producers who wish to participate in a program were to submit an application to the RAC by December 20. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other

available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in an RDP may be credited, and protects the program from overstated yields.

### RAC Recommendation

On November 29, 2000, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2000–01 NS crop estimated to be the largest on record at 427,394 tons, and a computed trade demand of 233,344 tons (comparable to market needs), the RAC projects a reserve pool of 194,050 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 25,000 tons of NS raisins would be eligible for diversion under the 2001 RDP.

At the meeting, RAC members evaluated the 2.75 tons per acre production cap. With this year's record crop and high yields per acre, the RAC believes that the grapevines will likely produce a smaller crop next year. In addition, RAC historical data indicates that the production cap under NS raisin diversion programs has averaged 2.24 tons per acre. Thus, the RAC recommended reducing the production cap from 2.75 to 2.5 tons per acre to more accurately reflect next year's anticipated yields. Accordingly, a new paragraph (t) is added to § 989.156 of the order's rules and regulations.

### Initial Regulatory Flexibility Analysis

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 firms are 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 subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have 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, excluding receipts from other sources.

This rule adds a new paragraph (t) to § 989.156 of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates for reserve raisins from the RAC. The order specifies a production cap limiting the yield per acre that a producer can claim in an RDP. This rule reduces the cap from 2.75 to 2.5 tons per acre to accurately reflect next year's anticipated yields. Authority for this action is provided in § 989.56(a) of the order.

Regarding the impact of this action on affected entities, producers who participate in the 2001 RDP will have the opportunity to earn some income for not harvesting a 2001–02 crop. Producers will sell the certificates to handlers next fall for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2001 RDP were established by the RAC at \$340 per ton.

Reducing the production cap will have no impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the \$340 per ton harvest cost. Handlers will redeem the certificates for 2000–01 crop NS reserve raisins and pay the RAC the \$340 per ton harvest cost plus payment for receiving, storing, fumigating, handling (currently totaling \$46 per ton), and inspecting (currently \$9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will not impact handler payments for reserve raisins under the 2001 RDP.

Alternatives to the recommended action include leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.5 tons per acre. However, the majority of RAC members believe that a cap of 2.5 tons per acre will more accurately reflect next year's yields.

There was some discussion at the RAC's meeting that the 2.5 tons per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 29, 2000, and the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated were 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 information impact 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: <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 15-day comment period is provided to allow interested persons to respond to this rule. Applications were due to the RAC by December 20, 2000.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The submission deadline for producer applications for the 2001 RDP was December 20, 2000; (2) producers are aware of this action which was recommended by the RAC at a public meeting; (3) the program is voluntary, and any producer who objects to the reduced production cap can choose to produce a raisin crop for delivery in 2001; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

#### 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 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. A new paragraph (t) is added to § 989.156 to read as follows:

##### § 989.156 Raisin diversion program.

\* \* \* \* \*

(t) Pursuant to § 989.56(a), the production cap for the 2001 raisin diversion program for the Natural (sun-dried) Seedless varietal type is 2.5 tons of raisins per acre.

Dated: December 29, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–33462 Filed 12–29–00; 2:37 pm]

**BILLING CODE 3410–02–P**

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 5

**RIN 3150–AG68**

#### Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to include a list of the types of Federal financial assistance activities administered by the NRC under Title IX of the Education Amendments of 1972, as amended (Title IX). Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the Title IX common rule requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a list of Federal financial assistance administered by that Agency.

**EFFECTIVE DATE:** February 5, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Irene P. Little, Director, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–7380.

**SUPPLEMENTARY INFORMATION:** Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the Title IX common rule requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a notice of the different types of Federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty-one (21) Federal agencies, including NRC, on August 30, 2000 (65 FR 52858–52895). NRC's portion of the final common rule will be codified at 10 CFR Part 5. Specifically, the statute states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,” with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). Title IX and the Title IX common rule prohibit discrimination on

the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but by other entities as well, including, for example, nonprofit organizations.

Because this amendment deals solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A).

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provision that would impose backfits as defined in 10 CFR Chapter I.

#### Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (55 U.S.C. 3501 *et seq.*).

#### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### List of Subjects in 10 CFR Part 5

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Graduate fellowship program, Grant programs—education, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Sex discrimination, State agreement program, Student aid, Women.

For the reasons set out in the preamble and under the authority of the