

# Proposed Rules

Federal Register

Vol. 71, No. 119

Wednesday, June 21, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 451

RIN 3206-AL06

#### Awards

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations regarding the employee awards program. These revisions clarify the use of performance-based cash awards by providing that such awards programs, as designed and applied, must make meaningful distinctions based on levels of performance. This proposed change is designed to ensure that better performers receive greater recognition.

**DATES:** Comments must be received on or before July 21, 2006.

**ADDRESSES:** Send or deliver written comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415; FAX: (202) 606-4264; or e-mail: [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Barbara Colchao, (202) 606-2720, FAX: (202) 606-4264, or e-mail: [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM is proposing to amend the incentive awards regulations in part 451 of title 5, Code of Federal Regulations, to ensure effective application of the merit system principles and related appraisal and incentive awards requirements and authorities. This amendment would clarify that agencies using the incentive awards authorities in chapter 45 of title 5, United States Code, to grant employees performance-based cash awards on the basis of a summary rating of record of "fully successful" or above must ensure that such cash awards reflect meaningful distinctions based on

levels of performance. In other words, when agencies grant rating-based awards, employees with higher performance ratings must be granted larger cash awards, as a percentage of basic pay, than those with lower ratings.

This amendment is consistent with the merit system principle at 5 U.S.C. 2302(b)(3), which states, in part, "appropriate incentives and recognition should be provided for excellence in performance." Further, the requirements in 5 U.S.C. chapter 43 regarding appraisal of employee performance state that the results of performance appraisal shall be used as a basis for rewarding employees "whose performance so warrants." Taken together, these requirements are not reasonably met by providing uniform amounts as performance-based cash awards irrespective of differences in summary performance ratings.

OPM is mindful that many agencies already use established performance-based awards programs that fully comport with the proposed regulatory requirement. Nonetheless, the importance of linking rating-based rewards to measured performance in a way that supports the merit system principle warrants this amendment to the awards regulations.

In addition, OPM is proposing to clarify that a rating of record used as the basis for a performance-based cash award must be at the fully successful level (or equivalent) or higher. The statute at 5 U.S.C. 4505a already establishes this threshold for rating-based cash awards granted to General Schedule employees and to other employees in certain circumstances.

These amendments to the incentive awards regulations would make no changes in regulations governing Senior Executive Service performance awards granted under 5 U.S.C. 5384 and 5 CFR 534.405.

#### Waiver of 60-Day Comment Period for Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists to waive the 60-day comment period for general notice of proposed rulemaking. Limiting the comment period for the proposed regulations to 30 days will enable OPM to issue final regulations at the time when most agencies are making their awards decisions, which will give practical effect to these regulations.

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

This rule has been reviewed by the Office of Management and Budget as a significant regulatory action in accordance with E.O. 12866.

#### Regulatory Flexibility Act

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

#### List of Subjects in 5 CFR Part 451

Decorations, Medals, Awards, Government employees.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

Accordingly, OPM is proposing to revise part 451 of title 5 of the Code of Federal Regulations as follows:

#### PART 451—AWARDS

1. The authority citation for part 451 continues to read as follows:

**Authority:** 5 U.S.C. 4302, 4501-4509; E.O. 11438, 33 FR 18085, 3 CFR, 1966-1970 Comp., p. 755; E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

#### Subpart A—Agency Awards

2. In § 451.101, paragraph (e) is revised to read as follows:

##### § 451.101 Authority and coverage.

\* \* \* \* \*

(e) An agency may grant performance-based cash awards on the basis of a rating of record at the fully successful level (or equivalent) or above under the authority of 5 U.S.C. 4505a and the provisions of this part to eligible non-GS employees who are covered by 5 U.S.C. chapter 45 and this part and who are not otherwise covered by an explicit statutory authority for the payment of such awards, including 5 U.S.C. 5384 (SES performance awards).

3. In § 451.104, paragraph (a)(3) is revised and a new paragraph (h) is added to read as follows:

##### § 451.104 Awards.

(a) \* \* \*

(3) Performance as reflected in the employee's most recent rating of record (as defined in § 430.203 of this chapter), provided that the rating of record is at the fully successful level (or equivalent) or above, except that performance

awards may be paid to SES members only under § 534.405 of this chapter and not on the basis of this subpart.

\* \* \* \* \*

(h) Programs for granting performance-based cash awards on the basis of a rating of record at the fully successful level (or equivalent) or above, as designed and applied, must make meaningful distinctions based on levels of performance.

[FR Doc. E6-9797 Filed 6-20-06; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV06-930-2 PR]

#### Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Cherry Industry Administrative Board (Board) for the 2006-2007 fiscal year and subsequent fiscal years from \$0.0021 to \$0.0066 per pound to fund the Board's administrative expenses and its new research and promotion program. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The Board locally administers the marketing order which regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The fiscal year begins July 1, 2006 and ends June 30, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by July 11, 2006.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moabdocket.clerk@usda.gov](mailto:moabdocket.clerk@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:

Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734-5243, Fax: (301) 734-5275.

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. 930, as amended (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherries are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2006-2007 and subsequent fiscal years for tart cherries from \$0.0021 to \$0.0066 per pound of tart cherries to fund the Board's administrative expenses and its new research and promotion program.

The tart cherry marketing order provides authority for the Board, with approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 930.41 of the order. In addition, § 930.48 of the order provides that the Board, with the approval of the USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cherries. The expense of such projects is paid from funds collected pursuant to § 930.41 (Assessments), or from such other funds as approved by the USDA.

For the 2003-2004 fiscal year, the Board recommended, and USDA approved, an assessment rate of \$0.0021 per pound of tart cherries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on March 16, 2006, and recommended 2006-2007 expenditures of \$1,523,000 and an assessment rate of \$0.0066 per pound of tart cherries. Eighteen of the nineteen Board members voted in support of the assessment rate increase. One Board seat is vacant. In comparison, last year's budgeted expenses were \$488,000. The assessment rate of \$0.0066 is \$0.0045 higher than the rate currently in effect. The Board recommended that the