DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV–97–989–2 FR]

Raisins Produced From Grapes Grown in California; Suspension of Provisions Concerning Certain Offers of Reserve Raisins to Handlers for Free Use

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension of rule.

SUMMARY: This final rule suspends language in provisions of the raisin marketing order concerning certain offers of reserve raisins to handlers for free use. The marketing order regulates the handling of raisins produced from grapes grown in California, and is administered locally by the Raisin Administrative Committee (Committee). This rule indefinitely suspends certain language to provide the Committee more flexibility in meeting its marketing needs. This rule was unanimously recommended by the Committee.

EFFECTIVE DATE: This final rule becomes effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced 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 final 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This final rule indefinitely suspends language in §§ 989.54(g) and 989.67(j) of the order. The suspension concerns certain offers of reserve raisins to handlers for free use. The suspension was unanimously recommended by the Committee.

Section 989.54(g) of the order describes two annual offers of reserve raisins to handlers for free use for each varietal type for which preliminary volume control percentages have been computed and announced. Each of these offers consists of 10 percent of the prior year's shipments of free raisins and reserve raisins sold for free use. These offers are known to the industry as the ''10 plus 10'' offers. The order currently mandates that the 10 plus 10 offers must be made simultaneously on or before November 15 of the crop year. The order defines the crop year for raisins as the 12-month period beginning with August 1 of any year and ending with July 31 of the following year.

Section 989.54(a) establishes that the trade demand for raisins shall be 90 percent of the prior crop year's shipments with adjustments for inventory, meaning that the trade demand excludes 10 percent of the prior year's shipments. Preliminary volume control percentages, which are computed and announced by October 5 of each crop year, make up to 85 percent of the trade demand available to handlers for disposal in any marketing channel. The final free percentage, which is recommended by the Committee by February 15 of each crop year, makes the remainder of the trade demand available to handlers.

Standard raisins are raisins which meet the minimum grade and condition standards for natural condition raisins. Handlers are required to place the reserve percentage of their standard raisin acquisitions in the reserve pool. One of the 10 plus 10 offers makes available, from the reserve pool, the 10 percent of the prior year's shipments which the final free percentage does not make available. This offer, then, equates the current year's supply with the prior year's shipments. Because the free percentage and this 10 plus 10 offer only make available the tonnage shipped during the prior year (with the appropriate inventory adjustments), the other 10 plus 10 offer, intended for market expansion, makes an additional 10 percent available to handlers from the reserve pool. Acceptance of the 10 plus 10 offers is voluntary; handlers are not required to purchase any reserve raisins.

The Committee believes that changes in the raisin industry, particularly changes to export programs administered under the marketing order, have made the 10 plus 10 offers a more important source of raisins for many handlers. The Committee's export programs in the early 1990's allowed handlers who exported California raisins to purchase, at a reduced rate, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported, allowing handlers to be price competitive in export markets, which generally feature lower prices than the domestic market. One effect of this program was that handlers would continuously purchase reserve raisins for free use throughout the crop year. Handlers who knew they would be exporting raisins did not need to purchase enough raisins to meet their needs for the entire year early in the season.

The current export program, which is in its second year of operation, offers cash, rather than reserve raisins, to exporting handlers. This has caused handlers to make larger purchases of 10 plus 10 raisins to replace the raisins formerly acquired through the export program. When handlers make large 10 plus 10 purchases early in the season, rather than small reserve purchases throughout the season, however, they are committing themselves to raisins before they have a firm estimate of their needs for the year. Handlers are forced to guess at the demand for the remainder of the crop year. If this guess is too high, prices will fall and there may be excess free tonnage inventory at the end of the crop year, resulting in market instability and a lower free percentage for the following year. If the guess is too low, market needs may not be met and the Committee may be forced to dispose of the excess reserve raisins in low income outlets.

Most raisin deliveries, and most of the associated costs, are concentrated between September and November, so handlers must establish large lines of credit at this time during each crop year. Because the Committee is required to make the 10 plus 10 offers concurrently on or before November 15 of the crop year, handlers must arrange for additional credit to make their 10 plus 10 purchases. The Committee believes that the inflexibility of the November 15 deadline and the requirement of simultaneous offers creates unnecessary financial stress on handlers.

Section 987.67(j) of the order lists other circumstances, including national emergency, crop failure, changing economic or marketing conditions, fire or other disasters, or to supplement an inadequate inventory to carryover to the next crop year, under which the Committee can sell reserve raisins for free use. The Committee also can offer reserve raisins for free use if raisin shipments during the first 10 months of the current crop year exceed 105 percent of shipments during the comparable period of the prior crop year. This type of offer is limited to the amount exceeding 105 percent of the prior year's shipments. Thus, if the market for raisins expands rapidly during any crop year, this provision allows the Committee to make more raisins available to handlers to supply the increased market needs. The 105 percent limit was established to safeguard against depressing raisin prices by expanding the free supply by too large a quantity. Like the 10 plus 10 offers, handler acceptance of this type of offer is voluntary.

During the past two seasons, the Committee has reduced its desirable carryout inventory level by about 20 percent, meaning that the free percentage provides for fewer raisins to remain at the end of a crop year for use in the following crop year. Reduction of the desirable carryout, coupled with the elimination of the export program which offered reserve raisins for free use, has increased the likelihood that the raisin industry might have an inadequate supply of raisins late in a crop year which featured an increase in shipments. If handlers, when making acquisition decisions early in the season, underestimate their needs for the crop year, they could be forced to either lose current sales or ship raisins which were intended to be carried over, which could prevent the industry from meeting its market needs early in the next crop year.

As an example, if the raisin industry were to experience 6 percent growth over the first 10 months of a given crop year, the Committee could offer reserve raisins for free use up to 1 percent of the previous year's shipments. With the tightening of the desirable carryout and the absence of reserve raisins offered under the export program, the industry could face a short supply of free raisins while an adequate supply of reserve raisins sat unused.

At its meeting on April 10, 1997, the Committee recommended suspending language in both §§ 989.54(g) and 989.67(j). In the former, the suspension eliminates both the simultaneous requirement and the November 15 deadline for the 10 plus 10 offers. In the latter, the 105 percent requirement is removed from the required level of shipments and the size of the reserve offer for free use.

Elimination of the simultaneous requirement and the November 15 deadline from the first sentence of § 989.54(g) will leave the following sentence, ''the Committee shall make two offers of reserve tonnage to sell to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced.'' This means that if preliminary percentages have been established, the Committee will still be required to make two 10 plus 10 offers, but these offers could take place independently at any time during the crop year.

The Committee expects that these changes will solve some of the planning and credit problems which handlers currently face. If one or both of the offers were moved to later in the crop year, handlers would be able to make better informed acquisition decisions. At the same time, a change in the offer date would ease the autumn credit burden for many handlers.

The language suspension in § 989.67(j) will leave the following as one of the circumstances which allows the Committee to offer reserve tonnage to handlers for free use: ''free tonnage shipments during the then current crop year exceeding shipments of a comparable period of the prior crop year: *Provided*, that, such sale of reserve tonnage shall be limited to the quantity exceeding shipments for the first ten months of the prior crop year''. Thus, if free tonnage shipments were up during the first ten months of a crop year, the Committee could offer reserve raisins to handlers for free use in any amount exceeding the prior year's shipments.

Following the earlier example, if the raisin industry were to experience 6 percent growth over the first ten months of a given crop year, the Committee could offer reserve raisins for free use up to 6 percent of the previous year's shipments. In fact, if the growth was only 4 percent, the Committee could offer up to 4 percent of the previous year's shipments. Under the current provisions, the Committee could make no offer at 4 percent growth because the year's growth did not meet the 5 percent threshold. The Committee believes that the current inflexibility could become problematic in the future, particularly if the industry was unable to take advantage of a growth opportunity in what has, in recent years, become a relatively stagnant market.

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 final 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 raisin marketing order and approximately 4,500 producers of raisins in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) 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. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This final rule suspends provisions concerning certain offers of reserve raisins to handlers for free use under §§ 989.54(g) and 989.67(j) of the raisin marketing order. The current provisions in § 989.54(g) require that the

Committee make two simultaneous offers of reserve raisins for free use, each equal to 10 percent of the prior year's free shipments, on or before November 15 of each crop year for each variety for which preliminary volume control percentages have been computed and announced. These ''10 plus 10'' offers are intended to ensure that the establishment of volume control regulations will not prevent the industry from having enough raisins to meet the prior year's shipments plus some raisins for market expansion.

Changes in the Committee's export programs have caused many handlers to greatly increase their 10 plus 10 purchases. During the 5 years prior to the change to the export programs, handler purchases of raisins from 10 plus 10 offers averaged 10,355 tons. In the 2 seasons since the program was modified, the purchases increased to an average of 61,033 tons, a 489 percent increase. The requirement that the offers be made simultaneously on or before November 15 of each crop year does not allow the Committee the flexibility that it now believes is necessary for handlers to meet their market needs. Because these offers must take place so early in the season, handlers have to guess at the level of raisins they will need for the year.

Raisin handlers, because most raisin deliveries to handlers are concentrated between September and November, must establish credit lines totaling between $250–270 million each autumn. Because of the increase in 10 plus 10 purchases, handlers have had to establish an additional $75–80 million in credit during their most financially burdened period of the year. The Committee believes that the inflexibility of the November 15 deadline and the requirement of simultaneous offers creates unnecessary financial stress on handlers, and that this suspension will alleviate that stress and allow the handlers to better plan to meet their market needs.

Section 989.67(j) of the order authorizes the Committee to offer reserve raisins for free use if raisin shipments during the first 10 months of the current crop year exceed shipments during the comparable period of the prior crop year. Thus, if the market for raisins expands rapidly during any crop year, this provision allows the Committee to make more raisins available to handlers to supply the increased market needs. Any such offer is limited, however, to the amount of raisins exceeding 105 percent of the prior year's shipments.

As described above, handlers are now making their acquisition decisions earlier in the season than in previous years. In addition, the Committee has tightened its supply situation during the last 2 seasons by reducing its desirable inventory level and eliminating the feature of its export program which made reserve tonnage available to handlers for free use. The Committee believes that these factors leave the industry with little room for error; if handlers underestimate the tonnage that is needed to meet the market needs, there are too few avenues for acquiring raisins for free use later in the season. In a growth year, a poor estimate could result in customers with unmet needs.

The earlier example discussed years in which the industry experienced 4 and 6 percent growth, and that the Committee now believes that the inflexibility of § 989.67(j) could prevent the industry from taking advantage of growth opportunities in what has become a relatively stagnant market. According to the Committee's 1996–97 marketing policy, during the last 10 crop years free shipments have ranged between 290,646 (in 1986–87) and 338,881 tons (1990–91). The most recent complete crop year's shipments (1995–96) were the lowest, 315,170 tons, since 1986–87. The Committee calculates that the loss of just 1 percent of annual shipments due to the inability to supply the late season market would cost about $3 million in grower revenue.

The Committee also considered the following situation. If free shipments during 10 months of a crop year were 275,000 tons, and shipments grew by 4 percent (11,000 tons) during the same time period during the following crop year, the current provision would allow for no reserve offer due to growth. Under this suspension, however, the Committee could offer up to 11,000 tons of reserve raisins for free use. Assuming a profit to handlers of 1 cent per pound, the Committee calculates that operating under the current provision would cost handlers $220,000 in profit and growers $11 million in revenue. The benefits generated by this rule are not expected to be disproportionately greater or less for small handlers or producers than for large entities.

The Committee discussed alternatives to this change, including not suspending any language in either section of the order. Suspending the provisions discussed herein provides the Committee with flexibility, including the option of operating exactly as it does now. If the Committee were to find any change was not beneficial, the suspension does not prevent the Committee from returning to its current procedures for the next year. Leaving the sections as they currently stand, however, offers the Committee no marketing flexibility. The Committee also recognized that reserve raisins can be offered for free use to supplement an inadequate carryover inventory, but thought that this option could be too late to prevent lost sales. Also, this suspension will not prevent the Committee from selecting such a course.

This final rule suspends language concerning offers of reserve tonnage raisins under the raisin marketing order. The order currently authorizes such offers and would continue to do so. Accordingly, this action will 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was issued by the Department on July 22, 1997, put on display at the Office of the Federal Register on July 27, 1997, and published in the **Federal Register** on July 28, 1997. Copies of the rule were mailed by the Committee's staff to all Committee members, raisin handlers, and dehydrators. Finally, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended August 27, 1997. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the order language to be suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because the crop year is underway and this rule suspends language concerning offers of reserve tonnage raisins to handlers for free use. This action could provide the Committee with more flexibility in meeting its marketing needs and therefore should be implemented as soon as possible. Further, handlers are currently making their marketing plans for the upcoming season. Handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed 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.

§ 989.54 [Amended]

2. In § 989.54, paragraph (g) the words, ''On or before November 15 of the crop year,'' and ''simultaneous'', are suspended indefinitely from the first sentence.

§ 989.67 [Amended]

3. In § 989.67, paragraph (j) the words, ''by more than 5 percent'' and ''105 percent of'', are suspended indefinitely from the first sentence.

Dated: September 22, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25621 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1138

[DA–97–07]

Milk in the New Mexico-West Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends certain provisions of the pool plant and producer milk definitions of the New Mexico-West Texas Federal milk marketing order for a two-year period. Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of the producers who supply milk to the market, requested continuation of the current suspension which would limit the pooling of diverted milk. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the market will continue to have their milk priced under the New Mexico-West Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: October 1, 1997, through September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202)720–9368, e-mail address Clifford__M__Carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 7, 1997; published May 13, 1997 (62 FR 26257).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 174 producers was pooled on the New Mexico-West Texas Federal milk order. Of these producers, 26 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 19 handlers operating pool plants under the New Mexico-West Texas order. Twelve of these handlers would be considered small businesses.

The suspension continues the current suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The continued suspension will allow more pooling of diverted milk. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New Mexico-West Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 13, 1997 (62 FR 26257) concerning a proposed suspension of certain