Proposed Rules

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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–07–0071; FV07–989–2 PR]

Raisins Produced From Grapes Grown In California; Use of Estimated Trade Demand To Compute Volume Regulation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on using an estimated trade demand figure to compute volume regulation percentages for 2007–08 crop Natural (sun-dried) Seedless (NS) 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). This rule would provide parameters for implementing volume regulation for 2007–08 crop NS raisins, if supplies are short, for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

DATES: Comments must be received by August 16, 2007.

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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.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.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Rose.Aguayo@usda.gov* or *Kurt.Kimmel@usda.gov.*

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.*

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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing 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 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 proposal invites comments on using an estimated trade demand figure to compute volume regulation percentages for 2007–08 crop NS raisins covered under the order. This rule would provide parameters for implementing volume regulation for 2007–08 crop NS raisins, if supplies are short, for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market. This action was unanimously recommended by the Committee at a meeting on April 12, 2007.

Volume Regulation Authority

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 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 or to replace part of the free tonnage raisins they exported; 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. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation for each crop year, which runs from August 1 through July 31. The Committee must meet by August 15 to review data regarding raisin supplies. At that time, the Committee computes a trade demand for each varietal type of raisins for which a free tonnage percentage might be recommended. Trade demand is equal to 90 percent of the prior year's domestic and export shipments, adjusted by subtracting carryin inventory from the prior year and adding a desirable carryout inventory for the end of the current year.

By October 5, the Committee must announce preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed trade demands. Preliminary volume regulation percentages are then computed to release 85 percent of the computed trade demand if a field price has been established or 65 percent of the trade demand if no field price has been established. Field price is the price that handlers pay for raisins from producers. By February 15, the Committee must recommend final free and reserve percentages that will tend to release the full trade demand.

The order also requires that, when volume regulation is in effect, two offers of reserve raisins must be made available to handlers for free use. These offers are known as the ''10 plus 10'' offers. Each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. The order also specifies that ''10 plus 10'' raisins must be sold to handlers at the current field price plus a 3 percent surcharge and Committee costs.

Development of Export Markets

With the exception of 11 crop years, volume regulation has been utilized for NS raisins since the order's inception in 1949. The procedures for determining volume regulation percentages have been modified over the years to address the industry's needs. In the past, volume regulation has been utilized primarily to help the industry manage an oversupply of raisins. Through the use of various marketing programs operated through reserve pools and other industry promotional activities, the industry has also developed its export markets.

Between 1980 and 1985, exports of California NS raisins averaged about 26 percent (53,700 packed tons, or raisins which have been processed) of the industry's total NS raisin shipments (207,600 packed tons, excluding government purchases) per year. During the last nine years (1997–2005) these exports averaged about 37 percent (105,000 packed tons, or raisins which have been processed) of the industry's total NS raisin shipments (282,000 packed tons, excluding government purchases) per year.

Export Replacement Offer

One market development program operated through reserve pools, the Export Replacement Offer (ERO), has helped U.S. raisins to be price competitive in export markets. Prices in export markets are generally lower than the domestic market. The ERO began in the early 1980's as a ''raisin-back'' program whereby handlers who exported California raisins could purchase, at a reduced price, reserve raisins for free use. This effectively blended down the cost of the raisins that were exported. The NS raisin ERO was changed to a ''cash-back'' program in 1996 whereby handlers could receive cash from the reserve pool for export shipments.

The ERO has been operated as a ''cash back'' program in all years since then, except for 2000, 2001, and a portion of 2002. During 2002 both ''cash back'' and ''raisin back'' programs were implemented. Financing for the cash-back ERO program has been primarily from the Committee's ''10 plus 10'' sales of reserve raisins. Under the 2002, 2003, 2004, and 2005 cash-back ERO programs an average of $39.7 million of reserve pool funds were utilized to support the export of about 103,000 packed tons of NS raisins.

Current Industry Situation—Declining Production

The Committee is concerned that the 2007–08 crop may be short because of grape vine removals over the last several years and an April frost. As a result, volume regulation may not be warranted based on the order's computed trade demand formula.

During the last several years, grape production has been declining because of poor grower returns in the wine and raisin segments of the industry. About 40,000 acres of grape vines have been removed in favor of other crops, which have recently been providing higher returns. In addition, a frost in April this year may reduce the crop further.

If no 2007–08 reserve were established, the industry would not be able to continue the ERO program and support its export sales. The Committee is concerned that the industry could lose a significant portion, perhaps 50 percent, of its export markets. Further, handlers who could not sell their raisins in export may sell their raisins domestically. Annual domestic shipments of NS raisins for the past 9 years have averaged about 177,000 packed tons. The Committee is concerned that additional raisins sold into the domestic market could create instability.

Thus, the Committee formed a working group to review this issue and consider options to continue to support its export sales while maintaining stability in the domestic market. After its meeting on February 1, 2007, the working group presented its recommendation to the subcommittee, and then, in turn, to the Committee.

At a meeting on April 12, 2007, the Committee unanimously recommended using an estimated trade demand rather than a computed trade demand to calculate the 2007–08 NS raisin crop volume regulation percentages, if the crop size falls within certain parameters. Section 989.154(b) of the order's administrative rules and regulations would be revised by replacing ''1999–2000'' with ''2007–08'' and ''235,000'' with ''215,000.''

Implementing Volume Regulation if Supplies Are Short To Maintain the ERO

Section 989.54(e) contains a list of factors that the Committee must consider when computing volume regulation percentages. Factor (4) states that the Committee must consider, if different than the computed trade demand, the estimated trade demand for raisins in free tonnage outlets.

The Committee unanimously recommended using an estimated trade demand figure for 2007–08 crop NS raisins, which is a figure different than the computed trade demand, to compute volume regulation percentages to create a reserve if supplies are short. This would allow the Committee to continue its ERO program, thereby maintaining a portion of its export sales and stabilizing the domestic market.

Specifically, the Committee recommended that an estimated trade demand be utilized to compute preliminary, interim, and final free and reserve percentages for 2007–08 crop NS raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the trade demand as computed according to the formula specified in § 989.54(a) of the order. If an estimated trade demand figure is utilized, the final reserve percentage would be no more than 10 percent. Finally, volume regulation would not be implemented if the 2007–08 crop estimate is below 215,000 natural condition tons.

To illustrate how this would work, the Committee would compute a trade demand for NS raisins by August 15 (as an example, 245,000 natural condition tons). At that time, the Committee would also announce its intention to use an estimated trade demand of 215,000 natural condition tons to compute volume regulation percentages for the 2007–08 crop.

Crop Estimate Below 215,000 Tons—No Regulation

The Committee would meet by October 5 to announce a NS crop estimate and determine whether volume regulation was warranted. Under the Committee's proposal, if the 2007–08 crop estimate is under 215,000 natural condition tons, volume regulation would not be recommended. With a crop of 215,000 natural condition tons, and about 108,000 natural condition tons of NS raisins projected to be carried forward from the 2006–07 crop year, a supply of about 323,000 natural condition tons of raisins would be available for the 2007–08 crop year. As previously mentioned, annual NS raisin shipments average about 282,000 packed tons (about 300,000 natural condition tons), excluding government purchases.

With an available supply of only 323,000 natural condition tons of NS raisins, the Committee believes that the industry's first priority would be to satisfy the needs of the domestic market, which absorbs annually an average of about 177,000 packed tons (188,000 natural condition tons). Assuming that 188,000 natural condition tons were shipped domestically, the Committee estimates that, with no ERO program to help U.S. raisins be price competitive in export markets, the industry would export about half of its usual tonnage, or about 56,000 natural condition tons. The remaining 79,000 natural condition tons would likely be held in inventory for the following 2008–09 crop year. Annual carryout inventory for NS raisins for the past 9 years has averaged about 108,000 natural condition tons.

Crop Estimate Between 215,000 Tons and 10 Percent Above the Computed Trade Demand—Volume Regulation

If the October 2007–08 crop estimate for NS raisins falls between 215,000 natural condition tons and 10 percent above the computed trade demand, the Committee would use an estimated trade demand figure to compute preliminary free and reserve percentages for the 2007–08 crop. Thus, using the 245,000 natural condition ton computed trade demand figure, an estimated trade demand would be used to compute volume regulation percentages if the crop estimate falls between 215,000 and 269,500 natural condition tons.

The order specifies that preliminary percentages compute to release 85 percent of the computed trade demand as free tonnage once a field price is established. Producers are paid the field price for their free tonnage. Normally, when preliminary percentages are computed, producers receive an initial payment from handlers for 85 percent of the computed trade demand (or 65 percent of the trade demand if no field price has been established). Using the 245,000 natural condition ton computed trade demand figure, this would equate to 208,250 natural condition tons. However, if the lower, 215,000 natural condition ton estimated trade demand figure were utilized to compute preliminary percentages, producers would receive an initial payment from handlers for only 182,750 natural condition tons, or 75 percent.

The Committee is concerned with the preliminary percentage computation using an estimated trade demand and its impact on producer returns. The Committee wants to ensure that the producers receive the field price for as much of their crop as possible while still establishing a small pool of reserve raisins to maintain the ERO. The Committee would meet by February 15 to compute final free and reserve percentages. The Committee recommended that if an estimated trade demand figure is used to compute percentages, the final reserve percentage be computed to equal no more than 10 percent of the estimated crop. Producers would ultimately be paid the field price for 90 percent of their crop, or their free tonnage.

The remaining 10 percent of the crop would be held in reserve and offered for sale to handlers in the ''10 plus 10'' offers. As previously described, the ''10 plus 10'' offers are two offers of reserve raisins that are made available to handlers for free use. The order specifies that each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. This requirement would not be met if volume regulation were implemented when raisin supplies were short. However, all of the raisins held in reserve would be made available to handlers for free use. Handlers would pay the Committee for the ''10 plus 10'' raisins and that money would be utilized to fund a 2007–08 ERO program. Any unused 2007–08 reserve pool funds could be loaned forward to initiate a 2008–09 ERO program or to make a grower payment to the 2007–08 reserve pool growers.

Crop Estimate More Than 10 Percent Above the Computed Trade Demand

Finally, the Committee recommended that, if the 2007–08 crop estimate is more than 10 percent greater than the computed trade demand (or above 269,500 natural condition tons in the earlier example), the computed trade demand (as an example, 245,000 natural condition tons) would be utilized to compute volume regulation percentages. Under this scenario, enough raisins (over 26,000 natural condition tons) would be available in reserve to continue the ERO program.

It is anticipated that allowing the use of an estimated trade demand figure to compute volume regulation percentages for 2007–08 crop NS raisins if supplies are short would assist the industry in maintaining a portion of its export markets and stabilize the domestic market. If the crop estimate is below 215,000 natural condition tons, no volume regulation would be implemented. If this occurs, it is anticipated that domestic market needs would be met, while export markets would likely not be satisfied.

However, if the crop falls between 215,000 natural condition tons and 269,500 tons, establishing a small reserve pool would allow the industry to not only satisfy the needs of the domestic market, but also maintain a portion of its export sales, which now account for about 37 percent of the industry's annual shipments. By maintaining an ERO program, even at a reduced level, exporters could continue to be price competitive and sell their raisins abroad. The domestic market would remain stable because it would not have to absorb any additional raisins that handlers could not afford to sell in export markets.

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.

There are approximately 23 handlers of California raisins who are subject to regulation under the order and approximately 4,000 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 23 handlers subject to regulation have annual sales estimated to be at least $6,500,000, and the remaining 10 handlers have sales less than $6,500,000, excluding receipts from any other sources.

This rule would revise § 989.154(b) of the order's administrative rules and regulations by changing the parameters for using an estimated trade demand figure specified in § 989.54(e)(4) of the order to compute volume regulation percentages for 2007–08 crop NS raisins. Section 989.154(b) would provide guidelines for the use of volume regulation if 2007–08 NS raisin supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

Regarding the impact of the action on producers and handlers, under the Committee's proposal, if an estimated trade demand figure was used to compute volume regulation percentages, the final reserve percentage would compute to no more than 10 percent. Producers would thus be paid the field price for at least 90 percent of their crop, but would not be paid the field price for about 10 percent of their crop that would go into a reserve pool. The field price for NS raisins for the past 5 years has averaged $1,073 per ton. Handlers in turn would purchase 90 percent of their raisins directly from producers at the field price, but would have to buy remaining raisins out of the reserve pool at a higher price (field price plus 3 percent and Committee costs). The ''10 plus 10'' price of NS reserve raisins has averaged about $100 higher than the field price for the past 9 years, or $1,173 per ton. Proceeds from the ''10 plus 10'' sales would be used to support export sales.

While there may be some initial costs for both producers and handlers, the long term benefits of this action far outweigh the costs. The Committee believes that with no reserve pool, and hence, no ERO program, export sales would decline dramatically, perhaps up to 50 percent. Handlers would likely sell into the domestic market raisins that they were unable to sell into lower priced export markets. Additional NS raisins sold into the domestic market, which typically absorbs about 177,000 packed tons, could create instability. The industry would likely lose a substantial portion of its export markets, which now account for about 37 percent (105,000 packed tons) of the industry's annual shipments (282,000 packed tons), excluding government purchases). Committee members have also commented that, once export markets were lost, it would be difficult and costly for the industry to recover those sales. Raisins are mostly used as an ingredient in baked goods, cereals, and snacks. Typically, buyers want reliable suppliers from year to year and are generally reluctant to find alternative ingredients or sources. In turn, once buyers change sources, they may not switch back.

Export markets for raisins are highly competitive. The U.S. and Turkey are the world's leading producers of raisins. Turkey exports approximately 80 percent of its total production, and represents an alternative product source for raisin buyers.

Maintaining the industry's export markets would help the industry maximize its 2007–08 total shipments of NS raisins and prevent handlers from carrying forward large quantities of inventory into the 2008–09 crop year. If the industry is unable to maximize its 2007–08 shipments of NS raisins, carry in inventory could be high, which would result in a lower computed trade demand figure for the 2008–09 crop year. If the industry returns to its pattern of relatively large crops in 2009–10, a low trade demand and large crop estimate would compute to a low free tonnage percentage. Large supplies exert downward pressure on the field price. Since NS raisin producers are paid significantly more for their free tonnage than for reserve tonnage, this would mean reduced returns to producers. Projected reduced 2009–10 returns to producers, coupled with the risks of rain and labor shortages during harvest, may influence producers to ''go green,'' or sell their raisin-variety grapes to the fresh-grape, wine, or juice concentrate markets. Additional supplies to those outlets could potentially reduce ''green'' returns as well.

A similar scenario occurred in the California raisin industry in the early 1980's where the industry experienced two consecutive short-crop years. The 1981–82 and 1982–83 crops were short, followed by relatively large crops for the remainder of the 1980's. The producer field price for NS raisins was $1,275 per ton for 1981–82 crop raisins, and $1,300 per ton for 1982–83 crop raisins. No volume regulation was implemented in 1982–83. However, a large inventory of high-priced raisins was carried forward into the 1983–84 crop year. When coupled with the largest crop on record at the time, volume regulation was implemented for the 1983–84 crop with the free tonnage percentage at a historically low 37.5 percent. By 1984, the producer field price for free tonnage raisins fell to $700 per ton, causing producers to experience large financial losses. Thus, the industry wants to help avoid a repeat of what happened in the 1980's by utilizing the Federal order to maintain export sales and provide stability in the domestic market.

An alternative to the proposed action was considered by the industry. As previously mentioned, the Committee formed a working group to address its concerns. The working group considered utilizing the computed trade demand formula in the order and utilizing about $7.5 million of available funds of the 2005–06 reserve pool and about 20,000 tons of natural condition raisins remaining in the 2006–07 reserve pool to fund the ERO. However, the committee decided that sufficient assets would not be available to fund the 2007–08 crop NS raisin ERO. The Committee's assets are not sufficient, because there was no 2004–05 reserve, and funds from the 2005–06 and 2006–07 pools will ultimately fund the 2007–08 ERO program only until about May 2008. Thus, after much discussion, the working group ultimately recommended to the Committee using an estimated trade demand to compute volume regulation percentages next year if 2007–08 crop NS raisin supplies are short.

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.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's working group meeting held on February 1, 2007, and the subcommittee and Committee meetings on April 12, 2007, were widely publicized throughout the raisin industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 1, 2007, and April 12, 2007, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, 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: *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 proposal. Fifteen days is deemed appropriate, because this action, if adopted, should be in place by the beginning of the 2007–08 crop year, August 1. 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. Section 989.154, paragraph (b) is revised to read as follows:

§ 989.154 Marketing policy computations.

(a) * * *

(b) *Estimated trade demand.* Pursuant to § 989.54(e)(4), estimated trade demand is a figure different than the trade demand computed according to the formula in § 989.54(a). The Committee shall use an estimated trade demand to compute preliminary and interim free and reserve percentages, or determine such final percentages for recommendation to the Secretary for 2007–08 crop Natural (sun-dried) Seedless (NS) raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand: *Provided,* That the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 2007–08 NS raisin crop estimate is less than 215,000 natural condition tons.

Dated: July 26, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14825 Filed 7–31–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA98

Poultry Contracts; Initiation, Performance, and Termination

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations issued under the Packers and Stockyards P&S Act, 1921 (7 U.S.C. 181, *et seq.*) (P&S Act) concerning Records to be Furnished Poultry Growers and Sellers. The regulations list the records live poultry dealers (poultry companies) must furnish poultry growers, including requirements for the timing and contents of poultry growout contracts.

The proposed amendments would require poultry companies to timely deliver a copy of an offered contract to growers; to include information about any Performance Improvement Plans (PIPs) in contracts; to include provisions for written termination notices in contracts; and notwithstanding a confidentiality provision, allow growers to discuss the terms of contracts with designated individuals.

DATES: We will consider comments we receive by October 30, 2007.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Federal e-Rulemaking Portal:* Go to *http://www.regulation.gov.* Follow the on-line instruction for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Regulatory analyses and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604 during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

As the Grain Inspection, Packers and Stockyards Administration (GIPSA), one of our functions is the enforcement of the Packers and Stockyards (P&S) Act of 1921. Under authority granted us by the Secretary of Agriculture (Secretary), we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act. Section § 201.100 of the regulations (9 CFR 201.100) specifies what contract terms must be disclosed to growers by poultry companies.

We believe the failure to disclose certain terms in a poultry growing out arrangement (growout contract) constitutes an unfair, discriminatory, or deceptive practice in violation of section 202 (7 U.S.C 192) of the P&S Act.

Due to the vertical integration and high concentration of the poultry industry, growers are often presented contracts on a ''take it or leave it'' basis. Growers do not realistically have the option of negotiating contract terms with a large poultry company. Growers often do not have the option of contracting with another poultry company on more favorable terms because there may be no other poultry companies in the area. There is considerable information asymmetry as well as an imbalance in market power: Growers sometimes do not know the full content of their own contract and are constrained by confidentiality clauses from discussing the contract with business advisers, while at the same time poultry companies have detailed information about the market as a whole and about the current terms being offered to other growers. Growers often have much of their net worth invested