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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS-FV-07-0083; FV07-989-3 FIR]

Raisins Produced From Grapes Grown in California; Change in Requirements for Interhandler Transfers of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the requirements for interhandler transfers of raisins under the administrative rules and regulations of the California raisin marketing order (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative California (Committee or RAC). This rule continues in effect the action that requires handlers who transfer raisins to other handlers within the State of California to certify to the Committee that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred to receiving handlers. This action helps maintain the integrity of the order by ensuring that handlers only transfer acquired, free-tonnage raisins that meet applicable order requirements.

EFFECTIVE DATE: October 25, 2007.

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 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 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."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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 rule continues in effect revisions to the requirements for interhandler transfers of raisins under the administrative rules and regulations of the California raisin order. This rule requires handlers who transfer raisins to other handlers within the State of California to certify to the Committee

that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred.

Pursuant to § 989.17, "acquire means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him." However, handlers are not deemed to acquire raisins if they are being stored for another, being reconditioned, or held for inspection. Also the term only applies to the handler who first obtains possession of the raisins. Free tonnage raisins are those raisins which have been acquired, not placed in the reserve pool, and for which producers receive payment for 100 percent of handler purchases. This change helps maintain the integrity of the order and was unanimously recommended by the Committee at a public meeting on April 12, 2007.

Section 989.59(e) of the order provides authority for handlers who acquire free-tonnage raisins to transfer such raisins to other handlers within the State of California. It also specifies that transferring handlers shall promptly report such transfers to the Committee, unless transfers are between plants owned or operated by the same handler. Further, it specifies that receiving handlers shall comply with all applicable order requirements before shipping or otherwise making final disposition of such raisins.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers and specifies that, upon request by the RAC, with the approval of the Secretary, handlers shall furnish to the RAC other information as may be necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as interhandler transfers. The RAC utilizes information collected under the order in its decision making.

Section 989.173 of the order's administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC. Under § 989.173(d)(1) of the order's rules and regulations any handler who transfers free-tonnage raisins to another handler within the State of California shall submit a report to the Committee showing information regarding the interhandler transfer not

later than five calendar days following such transfer.

Such information includes the transfer date; the names and addresses of the transferring parties; the varietal type, net weight, and condition of the raisins transferred; and the inspection certificate number, if the raisins have already been packed. Transferring handlers are required to forward two copies of the RAC Form No. 6, "Interhandler Transfers of Free-Tonnage Raisins," to the receiving handler at the same time the report is submitted to the Committee. The receiving handler is required to certify receiving the raisins and to submit one copy of the certification report to the Committee within five calendar days of receiving the raisins or the copies of RAC Form No. 6, whichever is later.

The Committee is concerned that some handlers may be transferring California raisins which are not acquired or which do not meet all applicable order requirements. Such requirements include proper reporting, inspection, assessments, and volume regulation. To help ensure that handlers only transfer acquired, free-tonnage raisins that meet all applicable order requirements, the Committee unanimously recommended that transferring handlers certify on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins," that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred. The Committee expects that requiring this certification should help maintain the integrity of the order.

This rule continues to modify § 989.173(d)(1) by deleting the word "and" from paragraph (iii); by changing the period to a semi-colon and adding the word "and" at end of paragraph (iv); and by adding a new subparagraph (v), which requires handlers to certify that the raisins being transferred are acquired, free-tonnage raisins that meet all applicable order requirements including proper reporting, incoming inspection, assessments, and volume regulation.

The RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins" has been modified by the addition of the following paragraph: "To Be Completed by Transferring Handler: The undersigned certifies that the raisins being transferred have met all Federal order requirements, including proper reporting, incoming inspection, assessments, and volume regulations, if applicable." No additional reporting burden is placed upon handlers.

Final 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 rule 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 the 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 are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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.

This rule continues to revise § 989.173(d)(1) of the order's administrative rules and regulations and requires handlers who transfer raisins to other handlers to certify on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins," that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred. This helps maintain the integrity of the order. Authority for interhandler transfers is provided in § 989.59, and authority to recommend this change is provided in § 989.73 of the order.

Regarding the impact of this action on affected entities, it continues to require handlers who transfer raisins to other handlers to certify on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins," that such raisins are acquired, free-tonnage raisins that meet all applicable order requirements.

The Committee considered not requiring handlers to certify that their transferred raisins are acquired free-tonnage raisins and that they meet all applicable order requirements. However, the Committee was concerned

that some handlers may be transferring California raisins which are not acquired or which do not meet all applicable order requirements. Such requirements include proper reporting, incoming inspection, assessments, and volume regulation. As receiving handlers want additional assurance that they are receiving raisins which have been acquired and which meet applicable order requirements, the Committee unanimously recommended revising the requirements regarding interhandler transfers of free-tonnage raisins.

All handlers must currently report their interhandler transfers to the Committee on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins." This form is currently approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178, Vegetable and Specialty Crops. This rule continues to add a certifying statement above the transferring handler's signature block to this form.

This rule 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 the industry and public sector agencies. In addition, as noted in the final regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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.

Further, the Committee's meetings were widely publicized throughout the California raisin industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. The Committee's Administrative Issues Work Group discussed this issue at length during meetings on January 23, and February 1, 2007. The Administrative Issues Subcommittee thus recommended the change to the Committee on April 12, 2007. All of these meetings were public meetings and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 7, 2007. Copies of the rule were also mailed to Committee members and alternates and all raisin handlers. In addition, the rule was made

available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 15-day comment period which ended on August 22, 2007. One comment supporting the rule was received. The commenter concurred that this action helps to maintain the integrity of the order.

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.

After consideration of all relevant materials presented, including the Committee's recommendation, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (72 FR 44029, August 7, 2007), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 72 FR 44029 on August 7, 2007, is adopted as a final rule without change.

Dated: September 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-18794 Filed 9-24-07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS-FV-07-0071; FV07-989-2 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides for use of 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 provides 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.

EFFECTIVE DATE: September 26, 2007.

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 final 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 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is applicable to the 2007–08 crop year, which began on August 1, 2007, and runs through July 31, 2008. This final 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 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 final rule provides for use of an estimated trade demand figure to compute volume regulation percentages for 2007–08 crop NS raisins covered under the order. This rule provides 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.