

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 723

RIN 0560-AE96

#### Amendment to the Tobacco Marketing Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

**SUMMARY:** This rule adopts as final, with minor technical changes, the proposed rule published in the **Federal Register** on March 21, 1997 (62 FR 13546). The rule amends the tobacco marketing quota regulations to: Provide for making quota "inequity adjustments" on a "common ownership unit" basis rather than strictly on a "farm" basis; eliminate unduly restrictive deadlines for the mailing of certain quota notices; permit, for burley and flue-cured tobacco, disaster transfers to be made by cash lessees, from cash rented farms, without the owner's signature; provide greater flexibility in the setting of penalty amounts for burley and flue-cured tobacco producer violations; eliminate a provision that requires yearly publication in the **Federal Register** of routine penalty computations; remove regulations governing the 1994-calendar year only "domestic marketing assessment", which was applicable to the use by certain cigarette manufacturers of set percentages of domestic tobacco; codify certain routine statutory provisions concerning, and penalties related to, setting burley and flue-cured tobacco national marketing quotas; and add several technical changes, including changes to reflect a recent reorganization of the Department of Agriculture.

EFFECTIVE DATE: March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Jr., Agricultural Program

Specialist, Tobacco and Peanuts Division, Farm Service Agency, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW, STOP 0514, Washington, DC 20250-0514, telephone 202-720-0795.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

##### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

##### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.0514.

##### Environmental Evaluation

It has been determined by an environment evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

##### Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 and 7 CFR part 711, as applicable, must be exhausted.

### Paperwork Reduction Act

This final rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*). The information collections required in 7 CFR part 723 have previously been cleared under OMB control number 0560-0058.

### Discussion of Comments

Thirty comments were received from the public in response to the proposed rule which was published in the **Federal Register** at 62 FR 13546 (March 21, 1997). Twenty-eight were from tobacco producers, one from a State farm organization and one from a college student. Only one comment was unfavorable and it expressed concern about the health issues of tobacco which are beyond the scope of this proceeding. Accordingly, the rule has been amended with technical changes for clarity and those corrections include new cross references in 723.309 and in 723.410 to 723.409 as amended in the rule. The latter specifies that where more than one party is responsible for the mis-marketing of tobacco, all parties are ultimately jointly liable for the remittance of the penalty amount to the government if the party who is normally assigned the duty of making the payment fails to make the payment. Also, to avoid any controversy and make clear that the rule is all-encompassing, certain references have been changed to specify that any party, regardless of how they would normally classify themselves, that aids in the mis-marketing of suspicious tobacco can be liable for remitting the penalty amount to FSA. This is not an expansion of the rule as any such aid would permit such a person to be considered a "dealer" in tobacco within the meaning of the rule.

### List of Subjects in 7 CFR Part 723

Acreage allotments, Dealers, Domestic cigarette manufactures, Marketing quotas, Penalties, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 723 is amended as follows:

### PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

**Authority:** 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1 and 1445–2.

2. Section 723.104 is amended by adding definitions for “common ownership unit”, “Farm Service Agency”, and “FSA” in their proper alphabetical order to read as follows:

**§ 723.104 Definitions.**

\* \* \* \* \*

*Common ownership unit.* A common ownership unit is a distinguishable part of a farm, consisting of one or more tracts of land with the same owners, as determined by FSA.

\* \* \* \* \*

*Farm Service Agency.* An agency within the U.S. Department of Agriculture.

\* \* \* \* \*

*FSA.* The Farm Service Agency.

\* \* \* \* \*

3. Section 723.210 is amended by adding a new paragraph (d) to read as follows:

**§ 723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.**

\* \* \* \* \*

(d) *Making certain adjustments on a common ownership unit basis.* Notwithstanding other provisions of this section, inequity adjustments may be allotted by common ownership unit rather than by farm when it is determined by the county FSA committee that the making of the allocation on that basis provides greater equity.

**§ 723.213 [Amended]**

4. Section 723.213 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

5. Section 723.216 is amended by revising paragraphs (a) introductory text, (a)(2)(ii)(A) and (a)(2)(iii)(A) to read as follows:

**§ 723.216 Transfers of tobacco acreage allotment or marketing quota by sale, lease, or owner.**

(a) *General.* The allotment or quota established for a farm may be transferred to another farm to the extent provided for in this section. For transfers by sale, common ownership units on a farm may be considered to be separate farms. Transfers are not permitted for cigar binder (types 54 and 55) tobacco allotments.

(1) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) *Leases.* The owner and operator of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner of the transferring farm will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

(B) \* \* \*

(iii) \* \* \*

(A) *Leases.* The owner of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner of the transferring farm will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

\* \* \* \* \*

**723.308 [Amended]**

6. Section 723.308 is amended by adding “and announced annually” after “determined” in the first sentence and removing the second sentence.

**§ 723.309 [Amended]**

7. The introductory text in § 723.309 is amended by adding the words “Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part”, before the words “The persons to pay.”

8. Section 723.409 is amended by revising the heading, paragraphs (a), (b), (e)(1), (e)(2) introductory text, and (f) and by removing paragraph (g), to read as follows:

**§ 723.409 Producer violations, penalties, false identification collections and remittances by dealers, buyers, handlers, warehouses, and other parties; related issues.**

(a) *Generally—(1) Circumstances in which penalties are due.* A penalty shall be due on all marketings from a farm which are:

(i) In excess of the applicable quota or allotment;

(ii) Made without a valid marketing card;

(iii) Made under circumstances where a buyer or dealer, or their agents, know, or have reason to know, that the tobacco was, or is, marketed in a manner which by itself or in combination with other marketings is designed to, or has the effect of, defeating the purposes of the tobacco price support and production adjustment program, avoiding marketing

quota limitations, or otherwise avoiding provisions of this part or part 1464 of this title;

(iv) Falsely identified; or,

(v) Marketings for which the producer or other party fails to make a proper account as required by the provisions of this part.

(2) *Amount of the penalty.* The amount of the penalty shall be the amount computed by multiplying the penalty rate by the penalty quantity.

(3) *Penalty rate.* The penalty rate for purposes of this section is that rate which is computed as the penalty rate per pound for the applicable kind of tobacco under § 723.308, except to the extent that a converted penalty rate may be used as provided for in this section.

(4) *Penalty quantity.* The penalty quantity for purposes of this section is the quantity of tobacco that is determined by the county FSA committee subject to the Director’s review to be subject to penalty, provided further that:

(i) For burley and flue-cured tobacco, the penalty quantity for purposes of this section shall be the amount of marketings from the farm in excess of 103 percent of the farm’s effective marketing quota for that year, except that if the violation involves false identification or a failure to account for tobacco, the FSA may, in its discretion, depending on the nature of the violations, use as the penalty quantity an amount up to 25 percent of the farm’s effective marketing quota plus 100 percent of the farm yield on any excess acreage for the farm (acreage planted in excess of the allotted acres, as estimated or determined).

(ii) For tobacco other than burley and flue-cured tobacco, the penalty quantity shall be the amount of marketings from the farm in excess of the farm’s marketing quota provided further, that in order to aid in the collection of the penalty the FSA may endeavor, to the extent practicable, to apply the penalty to all of the farm’s marketing by converting the full penalty rate to a converted proportionate penalty rate which rate may be identified on the producer’s marketing card and collected and remitted accordingly. In making the calculation of the converted penalty rate, the agency shall take into account any carryover tobacco applicable for the farm. If an erroneous penalty rate is shown on the marketing card, then the

producer of the tobacco and the producer who marketed the tobacco shall be liable for any balance due.

(5) *Limitations on reduced penalty quantities.* No penalty shall be assessed at less than the maximum amount unless it is determined by the county FSA committee, with the concurrence of the State FSA committee, that all of the following exist with respect to such violation:

(i) The violation was inadvertent and unintentional;

(ii) All of the farm's production has been accounted for and there are no excess marketings for which there are penalties outstanding;

(iii) The records for all involved farms have been corrected to show the marketings involved; and

(iv) The false identification or failure to account did not give the producer an advantage under the program.

(6) *Effect of improper, invalid, deceptive or unaccounted for marketings on penalty quantity calculation.* Any marketing made without a valid marketing card, falsely identified, or unaccounted for in accordance with the requirements of this part, or made under circumstances which are designed to, or have the effect of, defeating the purpose of the tobacco marketing quota and price support program, avoiding any limitation on marketings, avoiding a penalty, or avoiding compliance with, or the requirements of, any regulation under this part or under part 1464 of this title, shall be considered an excess marketing of tobacco. Further, such marketings shall, unless shown to the satisfaction of the county FSA committee to be otherwise, be considered, where relevant, to be in excess of 103 percent of the applicable marketing quota for the farm, and shall be subject to a penalty at the full penalty rate for each pound so marketed.

(7) *Pledging of tobacco by an ineligible producer.* In addition to any other circumstances in which a penalty may be assessed under this part, the marketing or pledging for a price support loan of any tobacco when the producer is not considered to be an "eligible producer" under the provisions of part 1464 of this title, shall be considered to be a false identification of tobacco and shall be dealt with accordingly. This remedy shall be in addition to all others as may apply.

(8) *Failures to make certain reports.* If any producer who manufactures tobacco products from tobacco produced by such person or another fails to make the report required by § 723.408(f) or otherwise required by this part, or makes a false report, such producer

shall be deemed to have failed to account for the disposition of tobacco produced on the farm(s) involved. The filing of a report by a producer under § 723.408 of this part which the State FSA committee finds to be incomplete or incorrect shall constitute a failure to account for the disposition of tobacco produced on the farm.

(b) *Special provisions for tobacco buyers, dealers, handlers, warehouse operators and others who acquire, handle, or facilitate the marketing of tobacco.* Notwithstanding the provisions of paragraph (a) of this section and other provisions of this part:

(1) Unless such amount has been remitted by another in accord with the provisions of this part, a dealer, buyer, warehouse operator or other person handling tobacco shall collect, and remit to FSA, an amount equal to the full penalty rate provided for in § 723.208 times the quantity of tobacco involved where the tobacco is not identified with a valid producer or dealer card, the tobacco is sold under suspicious circumstances, or when there is reason to suspect that the tobacco may be subject to a penalty for any reason or may be marketed in derogation of the goals and purposes of the tobacco support program. For purposes of the preceding sentence "handling" shall include any services provided with respect to the tobacco, and any facilitation of the marketing of tobacco regardless of the level or amount of contact, if any, that the party may actually have with the tobacco.

(2) The amount of the penalty required to be collected may be deducted from the proceeds due a seller and all parties chargeable under paragraph (b)(1) of this section shall be jointly and severally liable for insuring that the monies are remitted to FSA except to the extent that the Director shall allow for an exemption to facilitate the marketing of tobacco, or for some other reason.

(3) The collection and remittance of penalty shall be in addition to any other obligations that such person may have to collect other amounts, including other penalties or assessments due on such marketings.

(4) If a penalty is collected and remitted by a buyer, dealer, or warehouse operator that is shown not to be due or only partially due, then the overpayment shall be refunded to the appropriate party. It is the responsibility of the person that collected the penalty and the person that sold the tobacco involved to show to the satisfaction of the FSA that such penalty is not due in the full amount collected.

(c) \* \* \*

(e) \* \* \*

(1) For amounts of \$100 or less, the county FSA committee, and

(2) For amounts over \$100, the county FSA committee with approval of the State FSA committee determines that each of the following conditions is applicable:

(i) \* \* \*

(f) *Refusal to contribute required assessments.* A marketing penalty at the full rate per pound is due on each pound of tobacco marketed from a farm when the farm operator or producers refuse to pay no-net-cost or marketing assessments as provided in part 1464 of this title. In all such cases, the farm from which the tobacco has been produced shall be considered to have a marketing quota of zero pounds and an allotment of zero acres.

9. In § 723.410 the introductory text is revised to read as follows:

**§ 723.410 Penalties considered to be due from warehouse operators, dealers, buyers, and others excluding the producer.**

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, any marketing of tobacco under one of the following conditions shall be considered to be a marketing of excess tobacco.

\* \* \* \* \*

10. Part 723 subpart E is revised to read as follows:

**Subpart E—Establishing Burley and Flue-Cured Tobacco National Marketing Quotas**

Sec.

723.501 Scope.

723.502 Definitions.

723.503 Establishing the quotas.

723.504 anufacturer's intentions; penalties.

**§ 723.501 Scope.**

This subpart sets out regulations for setting annual national marketing quotas for burley and flue-cured tobacco based on the purchase intentions of certain manufacturers of cigarettes and on other factors. It also sets out penalty provisions for manufacturers who fail to purchase, within the tolerances set in this part, the amount of domestic tobacco, by kind, reflected in the stated intention as accounted for in accordance with this subpart.

**§ 723.502 Definitions.**

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

*Domestic manufacturer.* A domestic manufacturer of cigarettes.

*Domestic manufacturer of cigarettes.* A manufacturer, who as determined by the Director, produces and sells more than 1 percent of the cigarettes produced and sold in the United States annually.

*Price support inventory.* The inventory of tobacco which, with respect to a particular kind of tobacco, has been pledged as collateral for a price support loan made by CCC through a producer-owned cooperative marketing association.

*Producer owned cooperative marketing associations.* Those associations or their successors, which by law act as agents for producers for price support loans for tobacco, and which were, as of January 1, 1996, for burley and flue-cured tobacco, the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation.

*Unmanufactured tobacco.* Stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco.

#### **§ 723.503 Establishing the quotas.**

(a) *General.* Subject to the 3-percent adjustment provided for in paragraph (b) of this section, the annual marketing quotas for burley and flue-cured tobacco shall be calculated for each marketing year for each kind separately as follows:

(1) *Domestic manufacturer purchase intentions.* First, for each kind and year, the Director shall calculate the aggregate relevant purchaser intentions as declared or set under this section.

(2) *Exports.* Next, the Director shall add to the total determined under paragraph (a)(1) of this section the amount which is equal to the Director's determination of the average quantity of exported domestic leaf tobacco of the applicable kind for the past 3 marketing years. For this purpose, exports include unmanufactured tobacco only, including, but not limited to, stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco, and excludes tobacco contained in manufactured products including, but not limited to, cigarettes, cigars, smoking tobacco, chewing tobacco, snuff and semi-processed bulk smoking tobacco. The quantity of exports for the most recent year, as needed, may be estimated.

(3) *Reserve stock level adjustment.* The Director may then adjust the total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section, by making such adjustment which the Director, in his discretion,

determines necessary to maintain inventory levels held by producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley tobacco, the reserve stock level for these purposes is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national marketing quota. For flue-cured tobacco, the reserve stock level for these purposes is the larger of 100 million pounds farm sales weight or 15 percent of the previous year's national marketing quota. Any adjustment under this clause shall be discretionary taking into account supply conditions; however, for burley tobacco no downward adjustment under this clause may exceed the larger of 35 million pounds (farm sales weight) or 50 percent of the amount by which loan inventories exceed the reserve stock level.

(b) *Additional 3-percent adjustment.* The amount otherwise calculated under paragraph (a) of this section may be adjusted by the Director by 3 percent of the total. This adjustment is discretionary and may be made irrespective of whether any adjustment has been made under paragraph (a)(3) of this section and may be made to the extent the Director deems such an adjustment is in the best interest of the program.

(c) *Dates of announcement.* For flue-cured tobacco, the quota determination should be announced by December 15 preceding the marketing year. For burley, the announcement should be made by February 1 preceding the marketing year.

#### **§ 723.504 Manufacturers' intentions; penalties.**

(a) *Generally.* Each domestic manufacturer shall, for each marketing year, for burley and flue-cured tobacco separately, submit a statement of its intended purchases of eligible tobacco by the date prescribed in paragraph (d) of this section; further, at the end of the marketing year, each such manufacturer shall submit a statement of its actual countable purchases of eligible tobacco for that marketing year, by kind, for burley and flue-cured tobacco. For these purposes, countable purchases of eligible tobacco shall be as defined in, and determined under, paragraph (b) of this section. If a domestic manufacturer fails to file a statement of intentions, the Director shall declare the amount which will be considered that manufacturer's intentions for the marketing year. That declaration by the Director shall be based on the domestic manufacturer's previous reports, or such other information as is deemed appropriate by

the Director in the Director's discretion. Notice of the amount so declared shall be forwarded to the domestic manufacturer. If the domestic manufacturer fails to file a year-end report or files an inaccurate or incomplete report, then the Director may deem that the manufacturer has no purchases to report or take such other action as the Director believes is appropriate to fulfill the goals of this section. Intentions and purchases of countable tobacco will be compared for purposes of determining whether a penalty is due from the domestic manufacturer.

(b) *Eligible tobacco for statements of intentions and countable purchases toward those intentions.* For reports and determinations under this section, eligible tobacco for purposes of determining the countable purchases under paragraph (a) of this section will be unmanufactured domestic tobacco of the relevant kind for use to manufacture, for domestic or foreign consumption, cigarettes, semi-processed bulk smoking tobacco and other tobacco products. Eligible tobacco for these purposes does not include tobacco purchased for export as leaf tobacco, stems, trimmings, or scrap. Countable purchases of eligible tobacco shall include purchases of eligible tobacco made by domestic manufacturers directly from the producers, from a regular auction market, or from the price support loan inventory, and shall also include purchases by the manufacturer where the manufacturer purchases or acquires the tobacco from dealers or buyers who purchased the tobacco for the domestic manufacturer during the relevant marketing year directly from a producer, at a regular auction market, or from the price support loan inventory.

(c) *Weight basis and nature of reports.* The weight basis used for all reports and comparisons shall be a farm sales weight basis unless the Director permits otherwise and all reports will be considered to have been made on that basis unless the report clearly states otherwise. Submitted reports shall be assumed to cover countable purchases of eligible tobacco only, absent indications to the contrary.

(d) *Due dates and addresses for reports.* For flue-cured tobacco, the domestic manufacturer's statement of intentions shall be submitted by December 1 before the marketing year and the year-end report shall be submitted by August 20 following the end of the marketing year. Those respective dates for burley tobacco shall be January 15 before the burley tobacco marketing year and November 20 after the burley tobacco marketing year.

Reports shall be mailed or delivered to the Director, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250-0514.

(e) *Penalties.* A domestic manufacturer shall be liable for a penalty equal to twice the purchaser's no-net-cost assessment rate per pound for the applicable kind of tobacco for the relevant marketing year, if the manufacturer's purchases of either burley or flue-cured tobacco for the marketing year do not equal or exceed, as determined by the Director, 90 percent of their stated purchase intentions for that kind of tobacco for the relevant marketing year. The Director shall adjust the domestic manufacturer's intentions, however, to the extent, that producers have not produced the full amount of the national quota for the relevant marketing year for the particular kind of tobacco. The burden of establishing all purchases shall be with the domestic manufacturer and the Director may, in the case of indirect purchases for the manufacturer, require that the manufacturer obtain verification of the purchases by the dealer who made the purchase from the producer, at a regular auction market, or from the price support loan inventory, in order to assure that the tobacco is, to the manufacturer, a countable purchase. The Director may require such additional information as determined needed to enforce this subpart.

(f) *Penalty notice and penalty remittance.* Penalties will be assessed after notice and an opportunity for hearing before the Director. Remittances are to be made to the CCC and will be credited to the applicable producer loan association's no-net-cost fund or account as provided for in part 1464 of this title.

(g) *Maintenance and examination of records.* Each domestic manufacturer shall keep all relevant records of purchases, by kind, of burley and flue-cured tobacco for a period of at least 3 years. The Director, Office of Inspector General, or other duly authorized representative of the United States may examine such records, receipts, computer files, or other information held by a domestic manufacturer that may be used to verify or audit such manufacturer's reports. The reasonable cost of such examination or audit may be charged to the domestic manufacturer who is the subject of the examination or audit. All records examined or received under this part by officials of the Department of Agriculture shall be kept confidential to the extent required by law.

#### §§ 723.101 through 723.504 [Amended]

11. Sections 723.101 through 723.504 are amended by removing "ASC" wherever it appears and adding "FSA" in its place.

Signed at Washington, DC, on March 3, 1998.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 98-6060 Filed 3-9-98; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[FV98-989-1 IFR]

#### **Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 1997-98 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins**

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

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

**SUMMARY:** This rule establishes final volume regulation percentages for 1997-98 crop Natural (sun-dried) Seedless (Naturals) and Zante Currant (Zantes) raisins covered under the Federal marketing order for California raisins. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are 66 percent free and 34 percent reserve for Naturals and 44 percent free and 56 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. The volume regulation percentages are intended to help stabilize raisin supplies and prices and strengthen market conditions.

**DATES:** Effective August 1, 1997, through July 31, 1998. Comments received by May 11, 1998, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. 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.

#### **FOR FURTHER INFORMATION CONTACT:**

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, or Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 205-6632.

**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."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Natural and Zante raisins for the 1997-98 crop year, which began August 1, 1997, and ends July 31, 1998. 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