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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV03-989-2 FIR]

#### Raisins Produced From Grapes Grown in California; Temporary Suspension of a Provision, and Extension of Certain Deadlines Under the Raisin Diversion Program

**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 regarding the raisin diversion program (RDP) as specified 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 (RAC). The interim final rule temporarily suspended a November 30 deadline for announcing a 2003 RDP, and extended certain deadlines within the 2002-03 crop year concerning the RDP specified in the order's regulations. Changes beginning with a 2003 RDP were recommended by the RAC. This action was needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed for necessary review and evaluation of proposed provisions for such a program. The December 15 deadline for redemption of diversion certificates for the 2002 RDP was also extended, given the lack of sales of those certificates.

**EFFECTIVE DATE:** April 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 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. Such 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 to temporarily suspend an order provision concerning the November 30 deadline by which the RAC must announce a RDP, and extends related deadlines specified under the order's regulations concerning the 2003 diversion program. Changes beginning with a 2003 RDP were recommended by the RAC. This action was needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed for necessary review and evaluation of proposed provisions for such a program. This rule also continues in effect the action that extended the December 15 redemption deadline for diversion certificates for the 2002 Natural (sun-dried) Seedless (NS) RDP, given the lack of sales of those certificates. At a meeting on November 26, 2002, the RAC extended that deadline until February 3, 2003.

#### Volume Regulation Provisions

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 RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be 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 ultimately distributed to producers.

#### Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the

RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Prior to implementation of the interim final rule (67 FR 71072; November 29, 2002), these sections required the RAC to meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC, and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

#### **Extension of Deadlines for 2003 Diversion Program**

The California raisin and grape industries continue to be plagued by burdensome supplies and severe economic conditions. Industry members have been reviewing various options to help address some of these concerns. The RAC has also been reviewing options to help the industry address these issues through the marketing order.

At its October 15, 2002, meeting, the RAC recommended modifications to the RDP that were intended to significantly reduce the industry's oversupply and improve producer returns. Some revisions were proposed by the RAC's Executive Committee at follow-up

meetings on October 24 and November 4, 2002. The RAC hoped to have its recommended changes in effect for the 2003 diversion program, if recommended by the RAC and approved by USDA. Thus, temporarily suspending the November 30 deadline in the order for the RAC to announce a 2003 RDP, and extending other deadlines in the regulations were needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed for necessary review and evaluation of provisions for such a program.

The RAC met on December 12, 2002, to review the Executive Committee's changes and proposed program. The RAC ultimately recommended specific changes to the order's regulations that could apply to any future RDP. These changes were published in an interim final rule on January 28, 2003 (68 FR 4079).

Specifically, the words "On or before November 30 of" in § 989.56(a) were suspended until July 31, 2003, which is the end of the 2002–03 crop year. The November 30 date was also specified in § 989.156(a) of the order's regulations. The interim final rule added a proviso to § 989.156(a) that allowed the RAC to extend this date for the 2003 diversion program to a later date during the 2002–03 crop year. Similar provisos were added that allowed the RAC to extend the following dates in § 989.156 for the 2003 diversion program: the December 20 date specified in paragraph (b) whereby producers must submit applications to the RAC to participate in a RDP; the January 12 date specified in paragraph (c) whereby producers must submit corrected applications to the RAC; and the January 15 date specified in paragraph (a) whereby the RAC can allocate additional tonnage to a RDP. Section 989.56(a) and § 989.156 were modified accordingly.

Ultimately, the RAC recommended a 2003 RDP on January 29, 2003, and USDA approved the program on February 7, 2003. Producer applications were due to the RAC office on March 3, 2003, and corrected applications were due March 17, 2003. Additional tonnage may be allotted to the RDP through May 1, 2003.

#### **Extension of Redemption Deadline for 2002 Diversion Program**

Prior to implementation of the interim final rule, § 989.156(k) of the order's regulations specified that handlers must redeem diversion certificates by December 15 of the crop year for which they were issued. The value of the free tonnage represented on NS raisin diversion certificates has historically

been based on a free tonnage field price negotiated by the Raisin Bargaining Association (RBA) and industry handlers. As of December 15, 2002, a 2002 RBA field price had not yet been established, and most certificates had not been sold by producers. Therefore, § 989.156(k) was modified to specify that, for the 2002 NS RDP, the December 15 redemption deadline may be extended by the RAC to a later date within the 2002–03 crop year. As previously stated, at a meeting on November 26, 2002, the RAC extended that deadline until February 3, 2003.

#### **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 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 order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) 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 \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues in effect an interim final rule that temporarily suspended a provision specified in § 989.56(a) of the order regarding the November 30 deadline by which the RAC must announce a 2003 RDP, and extended related deadlines in § 989.156 applicable to the 2003 diversion program. This rule also continues in effect the interim final rule's extension of the December 15 redemption deadline for 2002 RDP certificates. Under a RDP, producers receive certificates from the RAC for curtailing

their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. Authority for these changes to the regulations is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the suspension of the November 30 meeting date and related extensions applicable to the 2003 diversion program were needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed necessary review and evaluation of proposed provisions for such a program. Changes beginning with a 2003 RDP were recommended by the RAC. Ultimately, the RAC recommended a 2003 RDP on January 29, 2003, and USDA approved the program on February 7, 2003. Producer applications were due to the RAC office on March 3, 2003, and corrected applications were due March 17, 2003. Additional tonnage may be allotted to the RDP through May 1, 2003.

Extending the December 15 deadline for the redemption of 2002 NS RDP certificates was necessary, given the lack of sales of such certificates. The deadline was extended until February 3, 2003. Producers had more time to sell their certificates to handlers, and handlers had more time to redeem the certificates with the RAC. Equity holders in the 2001 NS reserve pool benefited from the extension. A 2002 field price for NS raisins was established in early January 2003, and more transactions regarding the RDP certificates were completed. Producers earned income when they sold the certificates to handlers. Handlers redeemed the certificates for reserve

raisins. Finally, equity holders in the 2002 NS reserve pool earned some return for the raisins allotted to the RDP.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the RDP application) has been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. USDA initiated this action to facilitate administration of the order and help the raisin industry through this difficult time.

An interim final rule concerning this action was published in the **Federal Register** on November 29, 2002 (67 FR 71072). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the RBA, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on January 28, 2003. No comments were received.

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 material presented, and other available

information, it is hereby found that the order provision temporarily suspended does not tend to effectuate the declared policy of the Act. It is further found that the continued extension of the deadlines specified in this rule tends 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 CFR part 989 which was published at 67 FR 71072 on November 29, 2002, is adopted as a final rule without change.

Dated: March 14, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-6667 Filed 3-19-03; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135**

[Docket No. AO-14-A69, et al.: DA-00-03]

**Milk in the Northeast and Other Marketing Areas: Order Amending the Orders; Correction**

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

**ACTION:** Final rule; correction.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO-14-A69.
1005	Appalachian	AO-388-A11.
1006	Florida	AO-356-A34.
1007	Southeast	AO-366-A40.
1030	Upper Midwest	AO-361-A34.
1032	Central	AO-313-A43.
1033	Mideast	AO-166-A67.
1124	Pacific Northwest	AO-368-A27.
1126	Southwest	AO-231-A65.
1131	Arizona-Las Vegas	AO-271-A35.
1135	Western	AO-380-A17.

**SUMMARY:** The Agricultural Marketing Service is correcting the final rule that appeared in the **Federal Register** of February 12, 2003, which amended all Federal milk marketing orders based on

evidence received at a hearing held May 8-12, 2000, in Alexandria, Virginia. The document was published with an inadvertent error in Part 1030 regarding the computation of the statistical

uniform price for milk. This docket corrects the error.

**EFFECTIVE DATE:** April 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Associate Deputy