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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS-FV-07-0117; FV07-989-4 FR]

#### Raisins Produced From Grapes Grown In California; Revisions to Requirements Regarding Off-Grade Raisins

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises requirements regarding off-grade raisins 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 revises the requirement that notification handlers must provide to the inspection service and the Committee when they perform certain functions on off-grade raisins be in writing, thereby allowing them to use other means of communication, including e-mail. This rule also removes the requirement that handlers submit reports to the Committee regarding transfers of off-grade and other failing raisins. This action brings the order's administrative rules and regulations in line with current industry practices.

**EFFECTIVE DATE:** August 20, 2008.

**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](mailto:Rose.Aguayo@usda.gov) or [Kurt.Kimmel@usda.gov](mailto: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](mailto: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 not intended to have retroactive effect. 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 revises requirements regarding off-grade raisins under the order. This rule revises the requirement that notification handlers must provide to the Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA

(hereinafter referred to as the inspection service) and the Committee when they perform certain functions on off-grade raisins be in writing, thereby allowing them to use other means of communication, including e-mail. This rule also removes the requirement that handlers submit reports to the Committee regarding transfers of off-grade and other failing raisins. This action brings the order's administrative rules and regulations in line with current industry practices and was unanimously recommended by the Committee at a meeting on July 11, 2007.

The order provides authority for quality control whereby handlers must have their raisins inspected upon receipt from producers and prior to shipment. Handlers may receive raisins that do not meet minimum standards. Section 989.24(b) specifies that off-grade raisins are raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins (or raisins that have not been processed). Off-grade raisins that cannot be successfully reconditioned to meet the applicable minimum grade standards for processed raisins become other failing raisins.

Section 989.58(e) provides requirements for off-grade raisins. Paragraph (1) of that section specifies that off-grade raisins may be received or acquired by the handler, without further inspection, in eligible non-normal outlets (such as animal feed); be returned unstemmed to the person tendering the raisins (usually the producer); or be received by the handler for reconditioning. Off-grade raisins received by handlers under any one of these three categories may be changed to any of the other categories under such rules and procedures recommended by the Committee and approved by the Secretary of Agriculture (Secretary). Paragraph (2) of that section specifies that off-grade raisins may be transferred from a receiving handler's plant to another plant of his/hers or to that of another handler within the State of California.

Section 989.158(c) specifies rules and procedures for off-grade raisins. Paragraph (2) of that section requires that handlers notify the inspection service in writing prior to making any changes in off-grade raisin categories as described above. Paragraph (3) of that

section requires handlers to notify the inspection service in advance and in writing on a form provided by the Committee, of the time they plan to transfer lots of off-grade raisins for reconditioning. They must also provide the Committee this form. Paragraph (4) of that section specifies that handlers must notify the inspection service in writing prior to reconditioning off-grade raisins. Paragraph (6) of that section requires handlers to notify the inspection service in writing before transferring stemmed raisins to another handler for reconditioning, and to obtain from the receiving handler a statement that he or she will receive such raisins for reconditioning. Copies of the inspection notification and receiving handler statement must be forwarded by the transferring handler to the Committee.

Section 989.73(d) of the order provides authority for the Committee, with approval of the Secretary, to request other information from handlers that may be necessary for the Committee to perform its duties. Section 989.173(d)(2) specifies that handlers must report to the Committee information regarding transfers of off-grade raisins and other failing raisins, including the date of the transfer, the name and address of the receiving handler and location of his or her plant, the name and address of the tenderer of each lot included in the transfer and the inspection certificate numbers applicable to the lot, and the varietal type, net weight, and condition of the raisins.

In the early 1990s, the inspection service began computerizing much of the information regarding raisin inspections, including data regarding off-grade raisins. These computerized data are shared with Committee staff. The inspection service generates reports from this database as needed and provides the information to handlers. Handlers now notify the inspection service verbally or by other means of communication, including e-mail, before they change off-grade raisin categories, transfer off-grade raisins for reconditioning, recondition off-grade raisins, or transfer off-grade raisins that have been stemmed to another handler for reconditioning. Thus, it is no longer necessary for handlers to provide such notification in writing, too.

Likewise, it is not necessary for handlers to submit reports to the Committee on transfers of off-grade or other failing raisins. As stated above, the computerized data regarding off-grade raisins generated by the inspection service are shared with Committee staff. Additionally, handlers submit other

weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. These include the RAC-28, Processor's Report of Acquisition of Off-Grade Raisins; RAC-28A, Processor's Report of Disposition of Off-Grade Raisins and Raisin Residual Material; the RAC-30, Weekly Off-Grade Summary; the RAC-32, Monthly Report of Dispositions of Off-Grade Raisins, Other Failing Raisins and Raisin Residual Material; the RAC-33, Weekly Report of Disposition of Standard Raisins Recovered from Reconditioning of Off-Grade Raisins; and the RAC-51 CO, Inventory of Off-Grade Raisins on Hand (for organically produced raisins). These forms will continue to be used and are currently approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178, Vegetable and Specialty Crops.

Thus, the Committee recommended revising the order's administrative rules and regulations to remove these requirements and reflect current industry practices. Accordingly, this rule would revise paragraphs (2), (3), (4)(i), and (6)(ii) in § 989.158(c) and remove paragraph (d)(2) in § 989.173.

#### **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.

There are approximately 21 handlers of California raisins who are subject to regulation under the order and approximately 3,000 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (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.

This final rule revises § 989.158(c) regarding the requirement that

notification handlers must provide to the inspection service and the Committee when they perform certain functions on off-grade raisins be in writing, therefore, allowing them to use other means of communication, including e-mail. Handlers now provide such notification verbally or by other means of communication; written notification is no longer necessary. This rule also revises § 989.173(d) by removing the requirement that handlers must submit reports to the Committee on transfers of off-grade and other failing raisins. Handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. These changes bring the order's administrative rules and regulations in line with current industry practices. Authority for these changes is provided in §§ 989.58(e) and 989.73(d) of the order, respectively.

Regarding the impact of this action on producers and handlers, these changes will not impact producers, and will remove requirements on handlers that are not necessary. It brings the administrative rules and regulations in line with current industry practices.

As an alternative, the Committee considered maintaining the status quo. However, this is not practical since the requirements are no longer necessary. Handlers now notify the inspection service and the Committee verbally or by other means of communication before they perform certain functions on off-grade raisins. Additionally, handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. Thus, the Committee recommended revising the regulations to bring them in line with current industry practices.

This action revises reporting and recordkeeping requirements specified in the order's administrative rules and regulations for all California raisin handlers. These requirements were approved under OMB No. 0581-0178, Vegetable and Specialty Crops. No change to this approval is warranted as a result of this action. This action brings the regulations in line with current industry practices. Data regarding off-grade raisins have been computerized since the early 1990s. It is no longer necessary for handlers to advise the inspection service nor the Committee in writing when they perform certain functions regarding off-grade raisins. Handlers provide such notification verbally or by other means of communication, including e-mail. The time it takes to provide such

information is minimal. Likewise, it is no longer necessary for handlers to submit reports to the Committee regarding transfers of off-grade for reconditioning or other failing raisins. Handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. 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.

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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's July 11, 2007, meeting and the Administrative Issues Subcommittee meeting held earlier that day were widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, both were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on April 22, 2008 (72 FR 21551). Copies of the rule were mailed or sent via facsimile to all Committee members and raisin handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 22, 2008, was provided to allow interested persons to respond to the proposal. 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 matters presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found

that this rule, as hereinafter set forth, 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.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 989.158 is amended as follows:

■ a. In paragraph (c)(2), the second sentence is revised, and a new sentence is added after it;

■ b. In paragraph (c)(3), the fourth sentence is revised, and a new sentence is added after it;

■ c. In paragraph (c)(4)(i), the first sentence is revised, and a new sentence is added after it; and

■ d. Paragraph (c)(6)(ii) is revised.

The revised and added text reads as follows:

#### § 989.158 Natural condition raisins.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* Prior to making such change, the handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin such change. Such notification shall be provided verbally or by other means of communication, including e-mail. \* \* \*

(3) \* \* \* The handler shall notify the inspection service in advance of the time such handler plans to transfer each lot. Such notification shall be provided verbally or by other means of communication, including e-mail. \* \* \*

(4) \* \* \*

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including e-mail. \* \* \*

\* \* \* \* \*

(6) \* \* \*

(ii) Any packer may arrange for or permit the tenderer to remove the stemmed raisins (described in paragraph

(c)(6)(i) of this section), but not the residual, directly to the premises, within California, of another packer for further reconditioning of the raisins at the latter's premises. Such removal and transfer shall be made under the surveillance of the inspection service. The packer shall notify the inspection service as required in paragraph (c)(3) of this section. Such raisins may be received by the other packer without inspection. On and after such receipt of the raisins for further reconditioning, all applicable provisions of this part shall apply with respect to such raisins and the packer so receiving them.

\* \* \* \* \*

#### § 989.173 [Amended]

■ 3. In § 989.173, paragraph (d)(2) is removed and reserved.

Dated: July 16, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–16605 Filed 7–18–08; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2008–0733; Directorate Identifier 2008–NM–114–AD; Amendment 39–15617; AD 2008–15–05]

**RIN 2120–AA64**

#### Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Boeing Model 737–300, –400, and –500 series airplanes. This AD requires inspecting to determine if certain carriage spindles are installed, repetitive inspections for corrosion and indications of corrosion on affected carriage spindles, and if necessary, related investigative action and corrective action. This AD also provides optional terminating action. This AD results from a report of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. We are issuing this AD to detect and correct corrosion of the carriage spindle, which could result in fracture. Fracture of both the inboard and outboard carriage spindles, in the forward ends through