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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

**[Docket No. FV03–989–7 IFR]**

### Raisins Produced From Grapes Grown in California; Reduction in Additional Storage Payments Regarding Reserve Raisins Intended for Use as Cattle Feed

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

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

**SUMMARY:** This rule reduces the additional holding and storage payments regarding 2002 Natural (sun-dried) Seedless reserve raisins that are carried into the 2003 crop year and intended for use as cattle feed. The crop year runs from August 1 through July 31. Such payments are authorized 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). This action will reduce expenses incurred by the 2002 reserve pool and thereby help improve returns to 2002 equity holders, primarily raisin producers.

**DATES:** Effective August 1, 2003. Comments received by September 29, 2003, 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**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.*

**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 (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, 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 reduces the additional holding and storage payments regarding 2002 NS reserve raisins that are carried into the 2003 crop year and intended for use as cattle feed. The crop year runs from August 1 through July 31. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional payments for reserve raisins held beyond the crop year of acquisition. The RAC met on July 2, 2003, and unanimously recommended that additional payments for reserve raisins intended for use as cattle feed accrue beginning September 13, 2003, rather than August 1, 2003. This action will reduce expenses incurred by the 2002 reserve pool and thereby help improve returns to 2002 equity holders, primarily raisin producers.

#### 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 the reserve pool's equity holders, primarily producers.

**Costs Regarding Holding and Storage of Reserve Raisins**

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the RAC, in accordance with a schedule of payments established by the RAC and approved by the Secretary. Further, the RAC must pay rent to producers or handlers for boxes used in storing reserve raisins held beyond the crop year of acquisition. As previously mentioned, the crop year runs from August 1 through July 31.

Section 989.401(b) of the order's rules and regulations specifies additional payments to handlers for storing, handling, and fumigating reserve raisins held beyond the crop year of acquisition. Specifically, handlers must be compensated for such raisins at a rate of $2.30 per ton for the first 3 months (August through October), and at a rate of $1.18 per ton per month for the remaining 9 months (November through July).

Section 989.401(c) specifies further payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition. Specifically, persons who furnish boxes or bins used for storing reserve raisins held for the account of the RAC on August 1 are compensated for the use of such containers as follows: For boxes, 2½ cents per day, not to exceed a total payment of $1.00 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins, 20 cents per day per bin, not to exceed a total of $10.00 per bin per year.

**Disposal Program**

Pursuant to § 989.67(b) of the order, the RAC is implementing a program to dispose of 40,000 tons of 2002 NS reserve raisins for use as cattle feed. The tonnage is stored at handler facilities and will be adulterated to ensure that the raisins remain in non-commercial channels. The program is intended to help the industry reduce its burdensome oversupply of raisins. It will also help make available bins for storing raisins during the new crop year, which begins August 1, 2003. Barring unforeseen circumstances, reserve tonnage intended for use as cattle feed should be removed from handler premises by mid-September 2003.

**RAC Recommendation**

The RAC met on July 2, 2003, and unanimously recommended reducing the additional holding and storage payments regarding 2002 NS reserve raisins held by handlers on August 1, 2003, and intended for use as cattle feed. Specifically, additional payments for such raisins will accrue beginning September 13, 2003, rather than August 1, 2003. Thus, additional costs will only be incurred for such tonnage that remains at handler premises after September 12, 2003. Payments for storing and holding reserve raisins are deducted from reserve pool proceeds, and net proceeds are ultimately distributed to equity holders. Thus, reducing the expenses for 2002 NS reserve tonnage intended for use as cattle feed will help improve returns to 2002 equity holders.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. 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 service 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 reduces the additional holding and storage payments specified in paragraphs (b) and (c) of § 989.401 regarding 2002 NS reserve raisins that are intended for use as cattle feed. Specifically, additional payments for such raisins will accrue beginning September 13, 2003, rather than August 1, 2003. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional holding and storage payments for reserve raisins held beyond the crop year of acquisition. This action reduces these additional payments for 2002 NS reserve raisins held by handlers on August 1, 2003, that are intended for use as cattle feed. Authority for this action is provided in § 989.66(f) of the order.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the RAC. Net proceeds from sales of such reserve raisins are distributed to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins during the crop year of acquisition and for the subsequent crop year. Compensation is also paid for the use of bins and boxes for storing reserve raisins held beyond the crop year of acquisition.

Under the disposal program, it is estimated that about 22,500 tons of reserve raisins will remain at handler premises after August 1, 2003. If 634 tons were removed per day, costs to store, handle, and fumigate the tonnage at the current rate of $2.30 per day between August 1 and September 12, 2003, would be $59,133.00. Bin-rental costs for the same period at the current rate of $0.20 per day per bin would be $161,966.00. Thus, the RAC would incur an estimated $221,000 for holding and storing 2002 reserve raisins that are intended for use as cattle feed between August 1 and September 12, 2003. This rule will reduce these costs to zero and thereby reduce expenses incurred by the 2002 NS reserve pool. Handlers, however, will not be compensated this amount for holding and storing this tonnage.

Regarding alternatives to this action, one option would be to maintain the status quo and have the 2002 reserve pool incur these costs. However, this would not help to improve returns to 2002 equity holders. Another alternative would be to reduce the payments for the period August 1 through September 12, 2003, to figures lower than those currently specified in § 989.401. However, all RAC members supported reducing the additional holding and storage payments for 2002 reserve raisins intended for use as cattle feed so that such payments will accrue beginning September 13, 2003, rather than August 1, 2003.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the RAC's Administrative Issues Subcommittee and RAC meetings on July 2, 2003, where this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is invited to allow interested persons to respond to this rule. All written comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action needs to be in place by August 1, 2003, so that additional payments regarding reserve raisins held by handlers on August 1, 2003, and intended for cattle feed will be incurred beginning September 13, 2003, rather than August 1 2003; (2) handlers and producers are aware of this action which was recommended by the RAC at a public meeting; (3) the action was recommended by a unanimous vote of the RAC; and (4) this interim final rule provides a 60-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

**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. In § 989.401, paragraphs (b) and (c) are revised to read as follows:

### § 989.401 Payments for services performed with respect to reserve tonnage raisins.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between August 1 and October 31, and at the rate of $1.18 per ton per month, or any part thereof, between November 1 and July 31: *Provided,* That handlers holding 2002–03 Natural (sun-dried) Seedless reserve raisins on August 1, 2003, that are intended for use as cattle feed shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between September 13 and October 31, 2003, and at the rate of $1.18 per ton per month, or any part thereof, between November 1, 2003, and July 31, 2004. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1, shall be compensated for the use of such boxes and bins: *Provided,* That persons holding 2002–03 Natural (sun-dried) Seedless reserve raisins on September 13, 2003, that are intended for use as cattle feed shall be compensated for the use of such boxes and bins, and that no compensation shall be accrued for such raisins held between August 1 and September 12, 2003. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds, and *bin* means any container with a capacity of 1,000 pounds or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

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Dated: July 25, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

## Food Safety and Inspection Service

## 9 CFR Part 319

**[Docket No. 01–018F]**

## Definitions and Standards of Identity or Composition: Elimination of the Pizza with Meat or Sausage Standards

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is rescinding the regulatory standards of identity for ''pizza with meat'' and ''pizza with sausage.'' FSIS has determined that the standards no longer serve their original purpose of protecting the public from economic deception. Furthermore, FSIS believes that the standards may be