

cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent marketing years from \$0.09 to \$0.10 per pound of spearmint oil handled. The Committee unanimously recommended 2003–2004 expenditures of \$173,700 and an assessment rate of \$0.10 per pound. The assessment rate is \$0.01 higher than the \$0.09 per pound rate currently in effect. The quantity of assessable spearmint oil for the 2003–2004 marketing year is estimated at 1,697,200 pounds. Thus, the \$0.10 rate should provide \$169,720 in assessment income. This, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include \$138,400 for committee expenses, \$23,300 for administrative expenses, and \$12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were \$164,200, \$23,100, and \$4,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of \$173,700, which included a decrease to committee expenses, and increases in administrative and market research and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. The proposed budget includes an expenditure reduction of \$17,600 and no further alternative expenditure levels were discussed. The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide \$169,720 in assessment income. This, together with interest and other income, is approximately \$280 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming 2003–2004 marketing year indicates that the producer price for the 2003–2004 marketing year could be about \$9.13 per pound. Therefore, the estimated assessment revenue for the 2003–2004 marketing year as a

percentage of total producer revenue could be about 1.1 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 26, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Far West spearmint oil 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on April 22, 2003 (68 FR 19755). A copy of the rule was provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 20-day comment period ending May 12, 2003, 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/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 matter 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–04 marketing year begins June 1, 2003, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

#### PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 985.141 is revised to read as follows:

##### § 985.141 Assessment rate.

On and after June 1, 2003, an assessment rate of \$0.10 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: May 23, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–13521 Filed 5–29–03; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 989

[Docket No. FV03–989–1 FIR]

#### Raisins Produced From Grapes Grown in California; Modifications to the Raisin Diversion Program

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, with change, an interim final rule that modified the requirements of the raisin diversion program (RDP) 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). The changes are intended to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes include adding an additional date by which the RAC can increase the tonnage allotted to a RDP; adding authority for the RAC to limit the amount of tonnage allotted to vine removal; modifying the application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allowing partial production units to be included in a RDP and adding authority for the RAC to specify provisions to maintain the integrity of the program; and specifying in the regulations the approval of a program's provisions by USDA.

**EFFECTIVE DATE:** June 2, 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 Ronald L. Cioffi, Chief, 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 in effect modifications to the administrative rules and regulations regarding the RDP specified under the order. The changes are designed to provide the RAC with additional flexibility when implementing a RDP, and provide the opportunity for all producers to participate in a program. The changes include: Adding an additional date by which the RAC can increase the tonnage allotted to a RDP; adding authority for the RAC to limit the amount of tonnage allocated for vine removal; modifying application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; and allowing partial production units to be included in a RDP and allowing the RAC to specify provisions to maintain the integrity of the program.

These regulatory changes were recommended by the RAC at meetings on October 15, and December 12, 2002, by a near unanimous vote. A member voting no expressed concern with the definition of partial production unit as proposed by the RAC.

Given the above changes, appropriate revisions were made to the text of § 989.156 to include specific references to approval of USDA for a program's provisions.

#### 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 reserve pool equity holders.

#### Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for bringing supplies into closer balance with market needs. 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.

Pursuant to these sections, the RAC must meet during the 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.

#### **RAC Recommendation**

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 also has been reviewing options to help the industry address these issues through the marketing order. The RAC proposed some requirements for a 2003 RDP at a meeting on October 15, 2002. Additional revisions were proposed by the RAC's Executive Committee on October 24, and November 4 and 26, 2002. 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 regarding the RDP that could apply to any future RDP. The changes were designed to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes are described in the following paragraphs.

#### **Additional Date for Increasing the RDP Tonnage**

With the exception of the 2002–03 crop year, § 989.56(a) of the order and § 989.156(a)(1) of the regulations specify that the RAC must announce the quantity of tonnage allotted to a RDP on or before November 30 of each crop

year. Section 989.156(a)(1) specifies further, with the exception of the 2002–03 crop year, that the RAC may announce an increase in the tonnage eligible for a RDP on or before January 15 of each crop year. The November 30 deadline in the order was suspended, and the November 30 and January 15 dates in the regulations were extended for the 2002–03 crop year to dates specified by the RAC (67 FR 71072, November 29, 2002) to allow time for review and modification of the RAC's proposed RDP changes.

The RAC recommended that the regulations be modified to allow the RAC an additional opportunity to increase the tonnage eligible for a RDP on or before May 1 of each crop year subsequent to 2002–03. This will allow the RAC the opportunity to allocate additional tonnage to a RDP in years when raisin deliveries may be slow, or when additional reserve raisins may be available later during the crop year. Section 989.156(a)(1) was modified accordingly.

#### **Limit on Tonnage Allocated for Vine Removal**

Section 989.156(h)(1) specifies that the RAC may limit a RDP to vine removal only. This requirement remains unchanged by this rule. However, the RAC proposed having the ability to cap, or limit, the amount of tonnage allocated to a RDP for vine removal. For example, the RAC may allocate 100,000 tons to a RDP, of which 50,000 tons would be allotted for vine removal only. Under this scenario, the remaining 50,000 tons would be available for spur pruners (or producers who opted to reduce their production by methods other than vine removal). As described later in this rule, the RAC recommended revising the regulations to allow for the allocation of tonnage to spur pruners pro rata to all who applied. Imposing a cap on vine removers would ensure that a certain amount of tonnage would be available for a spur prune program. This additional requirement is specified in § 989.156(a)(2).

#### **Additional Agreement for Vine Removers Who Replant**

The RAC recommended that authority be added for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs. Producers who agree to remove vines, but replant within a specified number of years (maximum of 5 crop years), as determined by the RAC, with the approval of USDA, must agree to compensate the RAC for appropriate damages for the tonnage

specified in the applicable diversion certificate. The payment of damages would be appropriate because replanting would cause serious damage to a RDP and the raisin industry. On January 29, 2003, the RAC recommended, and USDA subsequently approved, imposing a 5-year restriction on replanting as a feature of a 2003 RDP for NS raisins (35,000 tons of 2002 reserve raisins were allocated to a 2003 RDP). This should remove acreage from production for at least 8 crop years because it takes about 3 years for a new vineyard to have significant production. Adding this requirement to a RDP is expected to help the industry reduce its burdensome oversupply.

Accordingly, the producer application for a 2003 RDP was modified to condition a vine removal program with a producer's agreement not to replant. Producers who elect to participate in a RDP and later replant will be required to compensate the RAC for damages at a rate of \$700 per ton, as recommended by the RAC and approved by USDA, for the tonnage specified on the diversion certificate.

The interim final rule specified that funds collected by the RAC for such damages will be deposited in the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool. An addition has been made to this final rule, based on a comment received. The comment is addressed in detail later in this rule. Specifically, if the applicable reserve pool has been closed and equity distributed, damages collected will be deposited in the reserve pool for the crop year in which such monies are received. If no reserve pool exists for that year, then damages collected will be deposited in an open reserve pool of the crop year closest to the applicable diversion pool. Finally, as stated in the interim final rule, if a determination is made by the RAC that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the RAC's decision in accordance with paragraph (m) of § 989.156.

#### **Application of Production Cap**

Under a RDP, the reserve tonnage allocated to a program becomes part of the following year's supply. For example, if 100,000 tons of 2002–03 reserve raisins were allocated to a RDP, that tonnage would be issued to RDP producers in the fall of 2003 in the form of certificates from the RAC. The certificates represent actual raisins. The 100,000 tons would then be included in the 2003–04 crop estimate. A higher crop estimate reduces the free tonnage

percentage. Since producers are paid by handlers for their free tonnage raisins, a lower free tonnage percentage reduces producer returns. The industry has had concerns with the impact of large diversion programs on the following year's free tonnage percentage.

As a result, the RAC recommended that the concern about large RDP's adversely impacting the following year's free tonnage percentage be addressed through application of the production cap. A production cap is a limit on the yield per acre that is permitted under a RDP. Section 989.156(a) specifies that the RAC must announce the production cap at the same time it announces a RDP for the crop year. The section specifies further that the production cap shall equal 2.75 tons per acre, unless it is lowered by the RAC, with approval of the Secretary.

The RAC proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal) to lessen the adverse effects a large RDP would have on the following year's free tonnage percentage. For example, the RAC could specify that the production cap applicable to 2003 spur pruners would equal the lesser of 2.75 tons per acre, or 80 percent of the 2002 yield per acre on that production unit. The following table illustrates this further.

2002 yield per acre (tons)	Application of production cap (tons)
5.0 .....	2.75 (2.75 cap)
4.0 .....	2.75 (2.75 cap)
3.5 .....	2.75 (2.75 cap)
3.4375 .....	2.75 (both 80% and 2.75)
3.2 .....	2.56 (80% cap)
3.0 .....	2.4 (80% cap)
2.5 .....	2.0 (80% cap)
2.0 .....	1.6 (80% cap)
1.5 .....	1.2 (80% cap)
1.0 .....	0.8 (80% cap)

Participants who agree to remove vines would not be subject to the percentage limit on the production cap because of the effectiveness of vine removal in reducing production capacity. However, such participants would remain subject to the established production cap. This additional flexibility is specified in § 989.156(a)(2).

#### **Allocation of Tonnage for Spur Pruners (Includes Methods of Diversion Other Than Vine Removal)**

Prior to implementation of the interim final rule, § 989.156(d) required that, if reserve tonnage existed after the

allocation of diversion tonnage had been made to all eligible producer applicants who agreed to remove vines, a lottery would be held to allocate remaining tonnage. The RAC recommended that it have the flexibility to allocate such tonnage either pro rata to remaining applicants or by a lottery for complete production units to remaining applicants if a minimal amount of tonnage remains. Allocating tonnage pro rata will provide the opportunity for all producers to participate in a spur prune program. Accordingly, §§ 989.156(a)(2) and 989.156(d) were modified to incorporate this option.

#### **Inclusion of Partial Production Units**

As described above, the RAC contemplates future RDP's where the tonnage allotted to applicants who agree to spur prune vines (or divert production using a method other than vine removal) may be done on a pro rata basis. Such producers would spur prune only a portion of a production unit, or a "partial" unit.

In 1997, the RAC recommended that partial production units no longer be accepted into the RDP, and § 989.156 was modified accordingly (62 FR 60764; November 13, 1997). This action was taken because the RAC had concerns that some producers were removing weak vines in a production unit and getting credit under a RDP for an inflated amount of tonnage.

To implement the RAC's proposal for allocating tonnage on a pro-rata basis to applicants who agree to spur prune their vines, and help maintain integrity of the program, the RAC recommended that a partial production unit must have two permanent, contiguous (natural or man-made) boundaries. This should eliminate the ability for producers to select certain rows of weak vines and artificially inflate the tonnage on their unit. This definition was added to paragraph (o) of § 989.156. Additionally, the words "or portion thereof" were added to paragraphs (h) and (i) of § 989.156 to indicate that partial units may be included in a RDP.

Finally, the RAC recommended that it be given the authority to specify provisions for a partial production unit to maintain the integrity of the program. For example, the RAC indicated that it might want to specify that only a certain corner of each vineyard may be accepted into a spur-prune RDP to further alleviate the problem of a producer choosing the weakest corner of his/her vineyard, and to help maintain the integrity of the RDP. Accordingly, paragraph (a) of § 989.156 was modified to reflect that the RAC may limit a program that is applicable to partial

production units by specifying the portion of the production units that can be diverted, or like provisions to maintain the integrity of the program.

#### **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.

The California Agriculture Statistics Service (CASS) forecasted the 2002 production of raisin variety grapes at 2,550,000 tons (green). This is a relatively high level of production. The record high production occurred in 2000, at 2,921,000 tons (green).

Producers market raisin variety grapes in the fresh market (table), wine or juice market (crush), or dry them into raisins. Typically, 67 percent of the crop is dried for raisins, 20 percent crushed for wine and juice, and the remaining 13 percent of the crop is utilized in fresh and canned sales. These outlets provide a hedge for producers attempting to minimize risk from bad weather (rain) or a depressed market (concentrate, wine, or raisins).

For the week ending March 22, 2003, seasonal deliveries for all varietal types of raisins were at 421,725 tons (381,992 tons for Natural (sun-dried) Seedless (NS)). This will be the third consecutive year that raisin production has been

above 400,000 tons. Combined domestic and export demand (shipments) is estimated at approximately 300,000 tons. These levels of production, combined with stable demand have resulted in a large build-up of free and reserve carryin inventories.

At the beginning of the 2002–2003 crop year (August 1, 2002), the RAC reported that 48,749 tons of NS raisins were currently being held in the reserve pool from the 2001 crop. In addition, 153,152 free tons were held by handlers in inventories. With total dried production initially estimated at 446,449 tons, and combined free and reserve inventories at 201,901 tons, the industry had over 600,000 tons of raisins.

This type of surplus situation leads to serious marketing problems. Handlers compete against each other in an attempt to sell more raisins to reduce inventories and to market their crop. This situation puts downward pressure on producers' prices and incomes.

In addition, it has been reported that the wineries offered \$65 a ton for green NS raisins for crushing. In recent years, wineries have typically offered prices ranging from \$164 to \$200 per ton. The wine price for NS grapes was lowered to \$125 per ton in 2000 and fell to \$85.70 per ton in 2001. This has resulted in more raisin variety grapes being dried for raisins, which has added to the surplus situation in the raisin market.

Typically, 500,000 tons of raisin variety grapes are delivered to the wineries for crushing. In 2001, this volume decreased to 261,000 tons. The 2002 crop year deliveries for crushing are expected to remain low.

Surplus situations are often the result of increased bearing acres, which are encouraged by high prices. However, bearing acres for raisin variety grapes have fallen from 280,000 acres in 2000 to 273,000 acres in 2002. In addition, 27,000 acres were idle due to the raisin diversion program. The increased raisin production is largely the result of producers deciding to dry more grapes for raisins due to the low crush prices and increased yields. The RAC hopes to utilize the RDP to help alleviate the industry's oversupply. The RAC's recommended changes were designed to add flexibilities to the RDP, and provide the opportunity for all producers to participate in a program. The overall impact of a RDP with the recommended flexibility is expected to impact small and large entities positively by reducing the industry's production capacity, and by bringing supplies in closer balance with market needs.

This rule continues to revise § 989.156 of the order's rules and regulations regarding the RDP. 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. Specifically, this rule continues to revise the requirements of a RDP by: Adding an additional date by which the RAC can increase the tonnage allotted to a RDP; add authority for the RAC to limit the amount of tonnage allocated for vine removal; modifying application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allowing partial production units to be included in a RDP and adding authority for the RAC to specify provisions to maintain the integrity of the program; and specifying in the regulations the approval of a RDP's provisions by USDA. Authority for these changes is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, these changes are designed to provide the RAC with additional flexibility when implementing a RDP. Adding the May 1 date whereby the RAC may increase the tonnage allotted to a RDP will give more producers an opportunity to participate in the program. The changes regarding the way tonnages are allocated under a program (cap on vine removal that will allow a specified amount of tonnage available for spur pruners, and allocating spur prune tonnage pro rata to all applicants) are intended to provide the opportunity for all producers to participate at some level in a RDP. Thus, all producers could potentially have the opportunity to earn some income for curtailing their production.

With regard to cost, based on past RDP's, the RAC estimates that compliance and verification costs associated with a RDP average about \$150 per production unit. Using an estimate of 1.25 production units per RDP producer application, if all 4,500 producers participated in a RDP, there could potentially be about 5,625 production units in a program. Thus, using the \$150 per unit figure, compliance and verification costs for the program could average about

\$843,750. The overall impact of the changes is difficult to quantify. However, if a RDP implemented using the increased flexibility helps bring supplies into balance with market needs over time, the benefits for both small and large entities would be positive. When supplies and market needs are in balance, experience has shown that producers and handlers both benefit, regardless of size.

Regarding alternatives to the RAC's recommendation, the industry has been considering various options and programs to help alleviate the severe economic conditions adversely impacting both raisin producers and handlers. Industry groups outside of the RAC are seeking financial assistance under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c). The RAC also has a subcommittee that is reviewing long-term solutions to help the industry that would require formal rulemaking changes to the marketing order. RAC members have been seeking short-term solutions available through the existing order, or slight modifications thereto. Thus, the changes incorporated through the interim final rule were designed to add flexibilities to the RDP and provide the potential for all producers to participate in a program. The RAC hopes to utilize the RDP to help alleviate the industry's oversupply situation.

The RAC and Executive Committee did consider options to some of the features recommended by the RAC. One option concerned an alternative to application of the production cap. That is, specifying that producers who agreed to spur prune their vines would have to spur prune an additional percentage of their acreage that would not be reflected on their diversion certificates. However, the order does not provide authority for the application of a "multiplier" in this fashion to vineyards that were spur pruned. The RAC ultimately proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal).

At its meetings, the Executive Committee also considered other dates besides May 1 whereby the RAC could increase the tonnage allotted to a RDP. An April date was contemplated, but not proposed because industry members would rather be past the threat of an April frost before making a decision whether to add tonnage to a RDP. Thus, the May 1 date was deemed appropriate and ultimately proposed by the RAC.

There was some discussion by industry members about partial

production units. Some members questioned whether authority for partial units should be added back into the order's regulations, and some questioned whether a partial unit should be required to have two permanent, contiguous boundaries. There was also concern that a producer could spur prune a corner of his/her vineyard, redesign his/her trellising system to provide for significantly increased yields, and contribute to future oversupplies. After much discussion, the majority of RAC members concurred with allowing partial production units in a RDP, and limiting such a unit to one that has two permanent, contiguous boundaries.

This rule does not add measurably to the current burden on reporting or recordkeeping requirements for 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 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.

Further, this action was reviewed by the RAC's Administrative Issues Subcommittee October 7 and 15, and December 10 and 12, 2002, by the RAC's Executive Committee on October 24, and November 4 and 26, 2002, and by the RAC on October 7 and 15, and December 12, 2002. All of these meetings where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on January 28, 2003 (68 FR 4079). Copies of the rule were mailed by the RAC staff to all RAC members and alternates, the Raisin Bargaining Association, 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 March 31, 2003. One comment was received. The commenter supported the changes, but suggested some minor modifications.

The commenter suggested adding language to § 989.156(a)(1) to clarify the authority of the RAC to make program modifications should the RAC announce an increase in eligible tonnage in a RDP on or before May 1. The commenter added that additional clarification may not be necessary because of existing language in § 989.156(r). That section contemplates that modifications can be made to the terms and conditions of a RDP after a producer's application has been approved, and requires producers to be notified of the changes and given the opportunity to agree with them or withdraw from the program. USDA concurs that authority for program modifications already exists in § 989.156(r) and no further clarification is necessary.

The second suggested language change by the commenter was to add "raisin-variety" prior to the word "vines" in § 989.156(a)(2)(iv) that refers to producers who replant vines. USDA believes that this clarification is not needed because all references to vines in § 989.56 are within the context of a raisin diversion program and are intended to refer to raisin-variety vines.

The third suggested change by the commenter was to add language as to how to handle damages that may be collected should a producer replant raisin-variety vines on the approved production unit within the announced period of up to 5 years. A 5-year period was announced for the 2003 RDP. The 2003 RDP requirements require approved applicants to remove their vines by June 1, 2003. Producers may not replant raisin variety vines on approved production units until June 1, 2008. The interim final rule stated, in § 989.156(a)(2)(iv), that any damages collected for a vine replanting violation must be deposited to the reserve pool fund of the reserve pool applicable to the particular RDP. In the case of the 2003 RDP, the 2002 reserve pool could not be closed until June 1, 2008, to ensure that no vine removal violations had occurred. Moreover, any collection process for a late occurring violation could cause a pool to remain open even longer.

Normally, reserve pools are closed and equity is distributed within 2 years of the crop year in which the reserve was established. The commenter suggested that damages collected be deposited in the "reserve pool for the crop year in which the monies are received, or if there is no reserve pool for the current year, then to the next prior year for which there was a reserve pool."

USDA concurs that a reserve pool need not remain open just because a

potential vine replanting violation might occur. However, based on discussions with RAC staff, USDA has concluded that, if the applicable pool has been closed, damages collected should be deposited in the next open reserve pool for the crop year closest to the RDP pool. This distribution is more orderly. For example, under the 2003 RDP, producers who removed vines cannot replant until 2008. Raisins from the 2002 reserve pool have been allocated to the 2003 RDP. If damages are collected in 2008, and the 2002 pool is closed, but the 2006 and 2007 reserve pools are open, such damages would be deposited in the 2006 pool. Accordingly, language is added to § 989.156(a)(2)(iv) to state that if the applicable RDP reserve pool has been closed and equity distributed, then any damages collected for that RDP shall be deposited in the next open reserve pool of the crop year closest to the applicable diversion pool.

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, including the RAC's recommendation, comment received, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (68 FR 4079; January 28, 2003), with changes, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003 RDP is well underway and this action should be made effective as soon as possible.

#### List of Subjects in 7 CFR Part 989

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

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

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 4079 on January 28, 2003, is adopted as a final rule, with the following changes:

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

**Authority:** 7 U.S.C. 601-674.

■ 2. In § 989.156, paragraph (a)(2)(iv) is revised to read as follows:

**§ 989.156 Raisin diversion program.**

(a) \* \* \*

(2) \* \* \*

(iv) Limit participation in a vine removal program to producers who agree not to replant raisin-variety vines for a period not to exceed 5 years and who agree to compensate the Committee for appropriate damages if raisin-variety vines are replanted. Damages collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool: *Provided*, That, if such reserve pool has been closed and equity distributed, damages collected shall be deposited in the next open reserve pool of the crop year closest to the applicable diversion pool. If a determination is made by the Committee that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the Committee's decision in accordance with paragraph (m) of this section;

\* \* \* \* \*

Dated: May 23, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-13518 Filed 5-29-03; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1405

**RIN 0560-AG94**

#### Crop Insurance Linkage

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) is removing obsolete references from its regulations requiring producers to obtain at least a catastrophic level of crop insurance for each crop of economic significance in order to be eligible for payment under certain programs, which are no longer in operation.

**EFFECTIVE DATES:** May 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Sharon Biastock (202) 720-6336.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This final rule is issued in conformance with Executive Order

12866 and has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

It has been determined that Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of final rule making regarding the subject matter of this rule.

#### Environmental Evaluation

It has been determined by an environmental 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 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule.

#### 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).

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act

This rule does not contain any new information collection requirements.

#### Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

#### Discussion of the Final Rule

The Commodity Credit Corporation is amending its regulations at 7 CFR part 1405 to remove obsolete requirements that crop insurance be obtained in order to be eligible for USDA benefits under some programs. Section 508(b)(7) of the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1508(b)(7)) provided that in order to be eligible for payments under the Agricultural Market Transition Act (7 U.S.C. 7201 note) (AMTA) the producer must obtain at least the catastrophic level of insurance for each crop of economic significance in which the producer has an interest or provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop, if insurance is available in the county for the crop. The AMTA programs, which included production flexibility contracts for wheat, feed grains, and upland cotton, 1996-through 2002-crop loans and loan deficiency payments for grains and similarly handled commodities and cotton, and the Sugar and Peanut Programs, ended September 30, 2002. The regulations for those programs were contained at 7 CFR parts 1412, 1421, 1427, 1435, 1443 and 1446 and were replaced by regulations for new programs under the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 note) (the 2002 Act). The 2002 Act did not include the requirement that producers obtain crop insurance in order to receive payments under the new programs and the Agency is therefore removing references to those parts from 7 CFR part 1405. Also, an unnecessary reference to 7 CFR part 1464, dealing with tobacco, is removed. Tobacco payments under 7 CFR part 1464 were at one time covered by a statutory tie to crop insurance, which has since been repealed. The crop insurance requirements for the Conservation Reserve Program and the Tobacco Program contained in 7 CFR part 1405 will remain as provided for in section 508(b)(7) of the FCIA. Some non-CCC loans and payments are also covered in section 508(b)(7) and are governed by other regulations. They are not impacted by this rule. This rule also does not impact crop-insurance ties to eligibility for CCC benefits that arise from provisions other than section 508(b)(7).

#### List of Subjects in 7 CFR Part 1405

Loan programs—agriculture

■ For the reasons set forth in the preamble, 7 CFR part 1405 is revised as set forth below.