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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–1 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule modifies 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 the Department.

DATES: Effective: January 29, 2003. Comments received by March 31, 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 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.*

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, 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 modifies 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 are as follows: Add 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; modify 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; revise the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; and allow partial production units to be included in a RDP and allow 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 are 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. Under the current regulations, the RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

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 are 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) is 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 will remain 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

This 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. The RAC contemplates that a 5-year restriction on replanting would be included as a feature of a 2003 RDP for NS raisins. This would 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 has been 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 per ton to be determined by the RAC and approved by USDA for the tonnage specified on the diversion certificate. 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. 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 § 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 989.56(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)

Section 989.156(d) currently requires that, if reserve tonnage exists after the allocation of diversion tonnage has been made to all eligible producer applicants who agree to remove vines, a lottery shall 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 would provide the opportunity for all producers to participate in a spur prune program. Accordingly, §§ 989.156(a)(2) and 989.156(d) is 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 remove 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 would eliminate the ability for producers to select certain rows of weak vines and artificially inflate the tonnage on their unit. This definition is added to paragraph (o) of § 989.156. Additionally, the words ''or portion thereof'' are 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 is 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.

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 firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $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) has forecast 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).

The industry's estimate for all variety raisin production, as of October 4, 2002, is 446,449 dried tons (407,996 tons for 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.

The RAC reports that 48,749 tons of NS raisins are currently being held in the reserve pool from the 2001 crop. In addition, 153,152 free tons are held by handlers in inventories. With current total dried production estimated at 446,449 tons, and combined free and reserve inventories at 201,901 tons, the industry has 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 are 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 revises § 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 revises the requirements of a RDP to: Add 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; modify 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; revise the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allow partial production units to be included in a RDP and add 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 would 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 would 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 RAC recommended changes are 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 trellacing 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. Finally, all interested persons are invited to submit information on the regulatory and informational impact 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 provided to allow interested persons to respond to this rule. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the RAC's recommendation, and other information, it is found that this interim final 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 rule provides the RAC with additional flexibility when implementing a RDP; (2) this rule needs to be in place as soon as possible so that these requirements can be in place for a 2003 RDP, and the RAC and all potential participants can plan accordingly. (3) this action was recommended by a near unanimous vote of the RAC and producer participation in a RDP is voluntary; and (4) a 60-day comment period is provided and all comments received will be considered in finalizing 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 § 989.156, paragraphs (a), (d), (h)(2) and (3), (i), and (o) are revised to read as follows:

§ 989.156 Raisin diversion program.

(a)(1) *Quantity to be diverted.* On or before November 30 of each crop year, the Committee, with the approval of the Secretary, shall announce the quantity of raisins eligible for a raisin diversion program: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year. On or before January 15 of each crop year, the Committee, with the approval the Secretary, may announce an increase in the tonnage eligible for a raisin diversion program: *Provided,* That, for the 2002 Natural (sun-dried) Seedless raisin diversion program, the Committee may announce an increase in the quantity of tonnage eligible for the program later than January 15: *And provided further,* That, for the 2003 and subsequent raisin diversion programs, the Committee, with the approval of the Secretary, may announce an increase in the tonnage eligible for a raisin diversion program on or before May 1 of each crop year. The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante

Currant, Monukka, and Other Seedless raisins. At the same time, the Committee, with the approval of the Secretary, shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. The factors to be reviewed by the Committee in determining allowable harvest costs shall include but not be limited to: Costs for picking, turning, rolling, boxing, paper trays, vineyard terracing, hauling to the handler, and crop insurance.

(2) *Additional provisions.*

For any crop year's diversion program, the Committee, with the approval of the Secretary, may:

(i) Limit the entire program to production units on which producers agree to remove vines;

(ii) Limit a portion of the program to production units on which producers agree to remove vines;

(iii) Limit the production cap to a percentage (less than or equal to 100 percent) of the yield per acre of the specific production unit for production units on which producers agree to divert production by methods other than vine removal;

(iv) Limit participation in a vine removal program to producer's who agree not to replant vines for a period not to exceed 5 years and who agree to compensate the Committee for appropriate damages if 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. 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;

(v) Specify how tonnage available to producers who agree to divert production by means other than through vine removal will be allotted, either pro-rata to remaining applicants, or by lottery to remaining applicants for complete production units if a minimal amount of tonnage remains; and/or

(vi) 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.

Additional provisions provided pursuant to this paragraph shall be announced at the time the tonnage available for that season's diversion program is announced.

* * * * *

(d) *Priority of applications and allocation of tonnage.*

(1) Those producer applications indicating that the vines on the producing units will be removed shall receive first priority over other applications when reserve tonnage under the program is to be allocated.

(2) Pursuant to paragraphs (a)(2)(i) and (a)(2)(ii) of this section, if the entire program, or a portion of the program, is limited to production units on which producers agree to remove vines, and the production volume in such vine removal applications exceeds the amount of diversion tonnage available for vine removal, a lottery will be held to allocate such vine removal tonnage among the respective applicants.

(3) Remaining tonnage available under a diversion program, after that allocated to producer applications indicating that the vines of the producing units will be removed, shall be allocated by the Committee either:

(i) pro-rata to remaining applicants; or

(ii) to remaining applicants by a lottery for complete production units, if a minimal amount of tonnage remains.

In conducting any lottery under this section, the Committee may group producer applications on a handler-by-handler basis, and separate lotteries will be held for each group. The diversion tonnage of raisins available for each such group in each lottery may not exceed the percentage of total handler acquisitions acquired by the group's handler during the previous crop year. If diversion tonnage exists after such group lotteries, such remaining diversion tonnage may be allocated by one lottery of all remaining producer applications.

* * * * *

(h) * * *

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit, or portion thereof, designated within the application not later than June 1 of the crop year in which a diversion program is implemented. Producers who remove the vines on a production unit after August 15 may qualify for a diversion program for that crop year if a diversion program is announced and if diversion on that unit and vine removal after August 15 can be documented and verified.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit, or portion thereof, by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in the next diversion program, when implemented: *Provided:* That any producer who has more than one production unit and fails to divert on an approved production unit or portion thereof may be denied the opportunity to participate on all of that producer's production units, in the next diversion program. For spur-pruned vines, this date may be extended 2 weeks from the date of the inspection of a producer's vineyard if more than 4 bunches on spur-pruned vines are present at the time of inspection.

(i) *Issuance of certificates.* When preliminary percentages are announced, the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. Such certificates shall represent an amount of reserve tonnage raisins equal to the amount of raisins diverted from the production unit(s), or portion(s) thereof, specified in the producer application, or additional quantity granted by the Committee when vines are diverted through vine removal or any other means established by the Committee, with the approval of the Secretary. If, prior to issuance of a certificate, the Committee is notified by an approved applicant that such applicant's interest in the production unit(s), or portion(s) thereof, involved in the program has been transferred to another person, the Committee may substitute the transferee for the applicant provided the transferee agrees to comply with the provisions of this section.

* * * * *

(o) *Production units.*

(1) For the purpose of the raisin diversion program, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). A producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other deliveries or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. If the information submitted by producers on the application concerning a unit's

production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers would not be precluded from submitting other information substantiating production if those producers desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

(2) For purposes of the raisin diversion program, a partial production unit must have two permanent, contiguous boundaries (either natural or man-made).

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Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1965 Filed 1–23–03; 5:09 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–5 FIR]

Raisins Produced From Grapes Grown in California; Additional Opportunity for Participation in 2002 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 allowed producers an additional opportunity to participate in the 2002 raisin diversion program (RDP). The RDP is 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 was intended to help reduce the burdensome oversupply affecting the California raisin industry.

EFFECTIVE DATE: January 29, 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.*

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. 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.

A 2002 RDP for Natural (sun-dried) Seedless (NS) raisins was established in November 2001. A total of 54,086 tons of 2001 crop reserve raisins was allocated to the program. This rule continues in effect a rule that allowed producers an additional opportunity to participate in the 2002 RDP. An additional 25,000 tons of 2001 crop reserve raisins was allocated to the RDP. The additional program applied to producers who agreed to remove vines from production, and was intended to help the industry reduce its burdensome oversupply. The action was recommended by the RAC at a meeting on May 30, 2002, by a vote of 45 in favor, 1 opposed (member opposed because the program did not provide for a moratorium on replanting), and 1 abstained.

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 are specified in § 989.156.