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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS-FV-07-0083; FV07-989-3 IFR]

#### Raisins Produced From Grapes Grown in California; Change in Requirements for Interhandler Transfers of Raisins

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

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

**SUMMARY:** This rule revises the requirements for interhandler transfers of raisins under the administrative rules and regulations of the California raisin marketing order (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative California (Committee). This rule requires handlers who transfer raisins to other handlers within the State of California to certify to the Committee that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred to receiving handlers. This action should help maintain the integrity of the order by ensuring that handlers only transfer acquired, free-tonnage raisins that meet applicable order requirements.

**DATES:** Effective August 1, 2007; comments received by August 22, 2007 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 Internet: [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.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.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Rose.Aguayo@usda.gov](mailto:Rose.Aguayo@usda.gov), or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This 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. A handler

is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the requirements for interhandler transfers of raisins under the administrative rules and regulations of the California raisin order. This rule requires handlers who transfer raisins to other handlers within the State of California to certify to the Committee that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred.

Pursuant to § 989.17, "acquire means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him." However, handlers are not deemed to acquire raisins if they are being stored for another, being reconditioned, or held for inspection. Also the term only applies to the handler who first obtains possession of the raisins. Free tonnage raisins are those raisins which have been acquired, not placed in the reserve pool, and for which producers receive payment for 100 percent of handler purchases. This change should help maintain the integrity of the order and was unanimously recommended by the Committee at a public meeting on April 12, 2007.

Section 989.59(e) of the order provides authority for handlers who acquire free-tonnage raisins to transfer such raisins to other handlers within the State of California. It also specifies that transferring handlers shall promptly report such transfers to the Committee, unless transfers are between plants owned or operated by the same handler. Further, it specifies that receiving handlers shall comply with all applicable order requirements before shipping or otherwise making final disposition of such raisins.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers and specifies that, upon request by the RAC, with the approval of the Secretary, handlers shall furnish to the RAC other information as may be

necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as interhandler transfers. The RAC utilizes information collected under the order in its decision making.

Section 989.173 of the order's administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC. Under § 989.173(d)(1) of the order's rules and regulations any handler who transfers free-tonnage raisins to another handler within the State of California shall submit a report to the Committee showing information regarding the interhandler transfer not later than five calendar days following such transfer.

Such information includes the transfer date; the names and addresses of the transferring parties; the variety, net weight, and condition of the raisins transferred; and the inspection certificate number, if the raisins have already been packed. Transferring handlers are required to forward two copies of the RAC Form No. 6, "Interhandler Transfers of Free-Tonnage Raisins," to the receiving handler at the same time the report is submitted to the Committee. The receiving handler is required to certify receiving the raisins and to submit one copy of the certification report to the Committee within five calendar days of receiving the raisins or the copies of RAC Form No. 6, whichever is later.

The Committee is concerned that some handlers may be transferring California raisins which are not acquired or which do not meet all applicable order requirements. Such requirements include proper reporting, inspection, assessments, and volume regulation. To help ensure that handlers only transfer acquired, free-tonnage raisins that meet all applicable order requirements, the Committee unanimously recommended at its April, 12, 2007, meeting that the transferring handlers certify on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins," that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred. The Committee expects that requiring this certification should help maintain the integrity of the order.

This rule modifies § 989.173(d)(1) by deleting the word "and" from paragraph (iii); by changing the period to a semicolon and adding the word "and" at end of paragraph (iv); and by adding a new subparagraph (v), which requires handlers to certify that the raisins being transferred are acquired, free-tonnage raisins that meet all applicable order

requirements including proper reporting, incoming inspection, assessments, and volume regulation.

The current RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins" will be modified by the addition of the following paragraph: "To Be Completed by Transferring Handler: The undersigned certifies that the raisins being transferred have met all Federal order requirements, including proper reporting, incoming inspection, assessments, and volume regulations, if applicable." No additional reporting burden is placed upon reporting handlers.

#### 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 rule 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 23 handlers of California raisins who are subject to regulation under the order and approximately 4,000 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 23 handlers subject to regulation have annual sales estimated to be at least \$6,500,000, and the remaining 10 handlers have sales less than \$6,500,000, excluding receipts from any other sources.

This rule revises § 989.173(d)(1) of the order's administrative rules and regulations and requires handlers who transfer raisins to other handlers to certify on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins," that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred. This should help maintain the integrity of the order.

Section 989.173(d)(1) is modified by deleting the word "and" from paragraph (iii); by changing the period to a semicolon and adding the word "and" to paragraph (iv); and by adding a new subparagraph (v) that requires handlers to certify that the raisins being transferred are acquired and meet all order requirements, including proper reporting, incoming inspection, assessments, and volume regulation, if applicable. Authority for interhandler transfers is provided in § 989.59, and authority to recommend this change is provided in § 989.73 of the order.

Regarding the impact of this action on affected entities, it requires handlers who transfer raisins to other handlers to certify on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins," that such raisins are acquired, free-tonnage raisins that meet all applicable order requirements.

The Committee considered not requiring handlers to certify that their transferred raisins are acquired free-tonnage raisins and that they meet all applicable order requirements. However, the Committee is concerned that some handlers may be transferring California raisins which are not acquired or which do not meet all applicable order requirements. Such requirements include proper reporting, incoming inspection, assessments, and volume regulation. As receiving handlers want additional assurance that they are receiving raisins which have been acquired and which meet applicable order requirements, the Committee unanimously recommended revising the requirements regarding interhandler transfers of free-tonnage raisins.

All handlers must currently report their interhandler transfers to the Committee on RAC Form No. 6, "Interhandler Transfer of Free-Tonnage Raisins." This form is currently approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178, Vegetable and Specialty Crops. This rule adds a certifying statement above the transferring handler's signature block to this form.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by the industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

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

Further, the meetings were widely publicized throughout the California raisin industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. The Committee's Administrative Issues Work Group discussed this issue at length during meetings on January 23, and February 1, 2007. The Administrative Issues Subcommittee thus recommended the change to the Committee on April 12, 2007. All of these meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the handler reporting requirements currently prescribed under the California raisin marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant materials presented, including the Committee'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) The Committee unanimously recommended this change at a public meeting after a recommendation by one of its subcommittees, and all interested parties had the opportunity to provide input; (2) handlers are aware of this change, which was discussed at four public meetings; and (3) the crop year begins August 1, 2007, and this change should be in place by that date.

#### 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 § 989.173, paragraph (d) is revised to read as follows:

#### § 989.173 Reports.

\* \* \* \* \*

(d) *Reports of interhandler transfers—*

(1) *Free-tonnage.* Any handler who transfers free-tonnage raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

(i) The date of transfer;

(ii) The name(s) and address(es) of the handler or handlers and the locations of the plants;

(iii) The varietal type of raisin, with organically produced raisins as specified in paragraph (g) of this section separated out, net weight, and condition of the raisins transferred: Provided, That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins;

(iv) If packed, the inspection certificate number in the event such raisins have been inspected prior to such transfer and a certificate issued. Two copies of such report shall be forwarded to the receiving handler at the time the report is submitted to the Committee, on one of which the receiving handler shall certify to the receipt of such raisins and submit it to the Committee within five calendar days after the raisins or the copies of such report have been received by him, whichever is later; and

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired, free-tonnage raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, assessments, and volume regulation.

(2) *Off-grade and other failing raisins.* Any handler who transfers off-grade raisins or other failing raisins including off-grade raisins unsuccessfully reconditioned, to another handler, other than a processor within the State of California, shall submit to the

Committee (on forms furnished by it) no later than Wednesday following the week of the transfer:

(i) The date of transfer;

(ii) The name and address of the receiving handler and the location of his plant;

(iii) The name and address of the tenderer of each lot included in the transfer and the inspection certificate numbers applicable to the lot; and

(iv) The varietal type, net weight, and condition of the raisins.

\* \* \* \* \*

Dated: August 2, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 07–3856 Filed 8–3–07; 9:12 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

#### Rural Utilities Service

#### 7 CFR Part 1740

RIN 0572–ACO2

#### Public Television Station Digital Transition Grant Program

**AGENCY:** Rural Utilities Service, Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, the interim final rule published in the **Federal Register**, (71 FR 3205) on January 20, 2006. The Rural Utilities Service, an agency which administers USDA Rural Development's Utilities Programs (hereinafter "USDA Rural Development" or the "Agency") is publishing this final rule to allow the Agency to make grants to enable Public Television Stations in rural areas to replace current analog television broadcasting equipment with digital television broadcasting equipment as part of the national transition to digital television service.

**DATES:** This rule is effective on August 7, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Orren E. Cameron III, Director, Advanced Services Division, USDA Rural Development, Room 2845–S, 1400 Independence Avenue, SW., STOP 1550, Washington, DC, 20250–1550. Telephone: 202–690–4493. FAX: 202–720–10551. E-mail: [ed.cameron@wdc.usda.gov](mailto:ed.cameron@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:** An interim final rule establishing 7 CFR part 1740, was published in the **Federal Register** on January 20, 2006 (71 FR 3205). The rule outlined statutory