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Rules and Regulations

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0007]

Raisins Produced From Grapes Grown in California; Temporary Suspension of Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily suspends the continuance referendum requirement under the Federal marketing order for California raisins. The continuance referendum scheduled between November 2023 and November 2025 overlaps with the timeframe the Agricultural Marketing Service (AMS) plans to conduct a formal rulemaking to amend the marketing order. This suspension delays the enforcement of the continuance referendum requirement to give precedence to the formal rulemaking process, which may include a producer referendum. In addition, if the marketing order is amended, this temporary suspension provides industry time to operate under the amended marketing order before the next scheduled continuance referendum.

DATES: Effective October 16, 2023, 7 CFR 989.91(c) is stayed through November 26, 2029. Comments received by November 15, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or via internet at: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this rule will be included in the record and will be made available to the public on the internet at the address provided above. Please be advised that the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Branch Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491 Fax: (202) 720–8938, or Email: *MarketOrderComment@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 989, both as amended (7 CFR part 989), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Raisin Administrative Committee (Committee) locally administers the Order and is comprised of growers and handlers of raisins operating within the area of production and a public member. The Committee consists of 47 members of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association(s) and 1 shall be a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 the Department of Agriculture (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 no later than 20 days after the date of the entry of the ruling.

This rule temporarily suspends the continuance referendum requirement under section 989.91(c). On October 20, 2022, the Committee recommended amending the marketing order through formal rulemaking and, in a separate request, recommended the suspension of the continuance referendum scheduled to occur sometime between November 2023 and November 2025. The Committee believes the suspension would eliminate any potential confusion among producers voting in two referendums in a two-year period.

Section 989.91(b) states that the Secretary shall terminate or suspend the operation of any or all provisions of the Order, whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act. Section 989.91(c) specifies the Secretary shall conduct a referendum no less than five crop years and no later than six crop years from November 26, 2018, to ascertain whether continuance of the Order is favored by producers. The requirement also specifies that subsequent referenda be conducted every six crop years thereafter. By this requirement, the timing of the next continuance referendum is scheduled to occur sometime between November 2023 and November 2025. AMS identifies this period as the same period when the formal rulemaking process would occur, which may also include its own referendum vote. In view of the anticipated time necessary to complete the proposed formal rulemaking action and the likelihood of an amendatory referendum being conducted within two years of the scheduled continuance referendum, AMS determined that the continuance referendum requirement should be suspended to minimize confusion among voters. Secondly, AMS determined that to conduct a continuance referendum during the same period for when the formal rulemaking is expected to occur would not allow the industry time to fully consider the impact of potentially new amendments to the Order. For these reasons, the continuance referendum requirement would not tend to effectuate the declared policy of the Act for that period of time, and therefore, AMS has determined not to conduct the continuance referendum at the time required by the Order.

Alternatively, AMS considered suspending the continuance referendum until immediately after the conclusion of the formal rulemaking. However, this timing would still result in multiple referenda occurring within the same 2-year period, which may cause voter confusion, and would prevent producers from having adequate time to evaluate any potential results of the amendatory process before voting on the continuance of the Order. To address these temporal concerns, AMS determined that the suspension of the continuance referendum requirement should extend until 2029, which is on course with the original structure of the timeframe under the Order as discussed in the preceding paragraph. This suspension would provide industry and the Committee time to assess the benefits of amendments resulting from the formal rulemaking, if any, prior to the continuance referendum, prevent any voter confusion, and also maintain the structure of the timetable in the Order. Based on that timetable, a continuance referendum would be conducted to determine if California raisin producers sufficiently support the Order as amended.

This rule suspends the continuance referendum requirement under section 989.91(c). The next scheduled continuance referendum will be conducted sometime between November 2029 and November 2030.

A 30-day comment period is provided to allow interested persons to respond to this interim final rule. AMS will consider all written comments received prior to the issuance of a final rule.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS considered the economic impact of this action on small entities. Accordingly, AMS prepared this regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses that are subject to such actions so that small businesses will not be unduly or disproportionately burdened by the action. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought through group action of essentially small entities acting on their own behalf.

Presently, there are approximately 18 handlers of raisins subject to regulation under the Order and approximately 2,000 raisin producers in the regulated area.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $4,000,000 (NAICS code 111332, Grape Vineyards). Small agricultural service firms are defined by the SBA as those having annual receipts of less than $34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Using USDA National Agricultural Statistics Service (NASS) data, the 2021 season average value of utilized production of California processed raisin-type grapes (most of which are dried into raisins) is $393.649 million. Dividing that figure by 2,000 producers yields an annual average revenue per producer of $196,825, well below the SBA large farm size of threshold of $4,000,000. In terms of annual sales of processed raisin-type grapes, the majority of producers may be classified as small entities.

Dividing the $393.649 million crop value figure by 18 handlers yields an average annual sales per handler estimate of $21,869,389. This annual average sales figure is measured at the producer-level crop value, and to draw conclusions about the proportion of small handlers, a handler margin estimate is needed.

There is no current publicly available estimate of an average raisin handler margin, but a 1988 economic study of the California raisin industry estimated producer-handler average margins of about 30 percent for bulk raisin shipments and about 60 percent for packaged shipments. Current handler margins are likely somewhat smaller, since the study was completed more than three decades ago, and current bulk handling and packaging technologies are more efficient.

An alternative method to compute an average handler margin for packaged raisins is to compare the NASS season average grower price per ton for processed raisin-type grapes (converted to its dried weight equivalent) with an average price per ton for packaged raisins that USDA paid under its Commodity Procurement Program in recent years ($1.41 per pound, $2,820 per ton). The NASS 2021 season average grower price for raisin-type grapes was $369 per ton. Using a standard conversion factor of 4.62 to convert to a dried-weight equivalent, the price per ton for raisins is $1,705 ($369 × 4.62). A computed handler margin estimate is 65 percent ($2,820/$1,705 − 1). Since the Commodity Procurement average price includes shipping cost to recipient locations, the 65 percent margin is moderately overstated.

If a handler had annual raisin sales of exactly $34 million (the SBA large firm size threshold) that would mean a handler margin of 55 percent above the producer level ($34,000,000/$21,869,389).

Since both abovementioned margin estimates for packaged raisin shipments (60 and 65 percent) are close to the 55 percent margin implied by the $34 million SBA size threshold, it can be concluded that there are raisin handlers with annual sales both above and below the size threshold. It is reasonable to assume that fewer than 9 of the 18 handlers have annual raisin sales well above $34 million. Therefore, more than 9, a majority of handlers, have raisin sales below $34 million and may be classified as small entities.

On October 20, 2022, the Committee recommended that AMS postpone the scheduled continuance referendum to avoid the referendum period overlapping with a formal rulemaking to amend the Order and any potential confusion it would otherwise cause producers. After considering the Committee's request, AMS determined that the scheduled continuance referendum should be suspended while AMS conducts a formal rulemaking to amend the Order and, if effectuated, while the industry operates under such amended Order.

Section 989.91(b) authorizes the Secretary to terminate or suspend the operation of any or all provisions of the Order, whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

This interim final rule suspends the continuance referendum requirement under section 989.91(c) of the Federal marketing order regulating the handling of raisins produced from grapes grown in California. The next scheduled continuance referendum will be conducted no earlier than November 26, 2029. AMS will consider all comments received prior to publication of a final rule in the **Federal Register**.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This interim final rule does 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 industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this interim final rule.

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.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this section 989.91(c) does not tend to effectuate the declared policy of the Act for the period specified herein and should be stayed for that period.

This interim final rule invites comments on the temporary suspension of the continuance referendum requirement under Marketing Order 989, which regulates the handling of raisins produced from grapes grown in California. A 30-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final rule is published in the **Federal Register**.

Good Cause Analysis

Pursuant to section 553(b)(B) of the Administrative Procedure Act, notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

AMS has 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 because this rule should be implemented as soon as possible since the continuance referendum period was originally scheduled during this time period and the potential formal rulemaking will likely begin soon, the Committee discussed this issue at public meetings and unanimously recommended a suspension of the continuance referendum, and the rule provides a comment period and any comments received will be considered prior to finalization of this rule.

For the reasons stated above, AMS also finds that good cause exists for the interim final rule to be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 989

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

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 989 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.

§ 989.91 Suspension or termination.

■ 2. In § 989.91, paragraph (c) is stayed from October 16, 2023 through November 26, 2029.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–22334 Filed 10–13–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3434

RIN 0524–AA39

Hispanic-Serving Agricultural Colleges and Universities (HSACU) Certification Process

AGENCY: National Institute of Food and Agriculture (NIFA), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This amendment to NIFA regulations updates the list of institutions that are granted Hispanic-Serving Agricultural Colleges and Universities (HSACU) certification by the Secretary and are eligible for HSACU programs for the period starting July 1, 2023, and ending July 1, 2024.

DATES: This rule is effective October 16, 2023, and applicable July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Amanda Sahinovic; Financial Policy Specialist; National Institute of Food and Agriculture; U.S. Department of Agriculture; 805 Pennsylvania Ave.; Kansas City, MO 64105; Voice: 816–266–9905; Email: *HSACU@usda.gov.*

SUPPLEMENTARY INFORMATION:

HSACU Institutions, 2023–2024: This rule makes changes to the existing list of institutions in appendix B of 7 CFR part 3434. The list of institutions is amended to reflect the institutions that are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting July 1, 2023, and ending July 1, 2024.

Certification Process: As stated in 7 CFR 3434.4, an institution must meet