Rules and Regulations

Federal Register

Vol. 89, No. 15

Tuesday, January 23, 2024

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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, Department of Agriculture (USDA).

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: This final rule adopts, without change, an interim final rule implementing a recommendation from the Raisin Administrative Committee (Committee) to temporarily suspend the continuance referendum requirement under the Federal marketing order for California raisins. This final rule continues in effect the temporary suspension to give precedence to the formal rulemaking process and to provide the California raisin industry time to operate under the marketing order, if amended, before the next scheduled continuance referendum.

DATES: Effective January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085 Fax: (202) 720–8938, or Email: *Christy.Pankey@usda.gov* or *Matthew.Pavone@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) 720–8085, 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 Agreement No. 989 and 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 production area and a public member. The Committee consists of 47 members, of whom 35 represent producers, 10 represent handlers, one represents the cooperative bargaining association(s), and one is 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 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. 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 sec. 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 continues in effect the temporary suspension of the continuance referendum requirement under § 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 eliminates any potential confusion among producers who would otherwise be voting in two referenda 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. Under this requirement, the next continuance referendum is scheduled to occur

sometime between November 2023 and November 2025. AMS identified this period as the same period when the formal rulemaking process will occur, which may also include its own referendum. In consideration 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. Additionally, AMS determined that conducting a continuance referendum during the same period as the formal rulemaking is expected to occur would not allow the industry time to fully consider the impact of potential amendments to the Order. For these reasons, the continuance referendum requirement does not tend to effectuate the declared policy of the Act for that period of time. 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 prevent producers from having adequate time to evaluate any potential effects of the amendatory process before voting on Order continuance. To address these temporal concerns, AMS determined that the suspension of the continuance referendum requirement should extend until 2029, at which point the original timeframe under the Order as discussed in the preceding paragraph will be resumed. Based on that timetable, the next continuance referendum will be conducted sometime between November 2029 and November 2030 to determine whether California raisin producers sufficiently support continuation of the Order.

Final 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 about 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.

This rule continues in effect the temporary suspension of the continuance referendum requirement under section 989.91(c). The Committee recommended this action to avoid the scheduled referendum period overlapping with the formal rulemaking to amend the Order and any potential confusion it would otherwise cause producers. After considering the Committee's request, AMS determined 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.

An interim final rule concerning this action was published in the **Federal Register** on October 16, 2023 (88 FR 71273). AMS provided a 30-day comment period ending November 15, 2023, to give interested persons time to respond to the interim final rule. AMS received one comment in support of the interim final rule. Accordingly, no changes were made to the rule as published.

This final rule continues in effect the temporary suspension of the continuance referendum requirement under § 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.

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 to those requirements are necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This 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 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 finalizing the interim final rule, without change, as published in the **Federal Register** of October 16, 2023 (88 FR 71273), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

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

■ Accordingly, the interim final rule amending 7 CFR part 989, which was published at 88 FR 71273 on October 16, 2023, is adopted as a final rule without change.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–01252 Filed 1–22–24; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1022

Fair Credit Reporting; File Disclosure

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing this advisory opinion to address certain obligations that consumer reporting agencies have under section 609(a) of the Fair Credit Reporting Act (FCRA). This advisory opinion underscores that, to trigger a consumer reporting agency's file disclosure requirement under FCRA section 609(a), a consumer does not need to use specific language, such as ''complete file'' or ''file.'' This advisory opinion also highlights the requirements regarding the information that must be disclosed to a consumer under FCRA section 609(a). In addition, this advisory opinion affirms that consumer reporting agencies must disclose to a consumer both the original source and any intermediary or vendor source (or sources) that provide the item of information to the consumer reporting agency under FCRA section 609(a).

DATES: This advisory opinion is effective on January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Amanda Quester, Alexandra Reimelt, or Ruth Van Veldhuizen, Senior Counsels, Office of Regulations at (202) 435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.[1] Refer to those procedures for more information.

I. Advisory Opinion

A. Background

The FCRA regulates consumer reporting.[2] Congress enacted the statute ''to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.'' [3] One of the problems with the credit reporting industry that Congress recognized and sought to remedy with the FCRA was that a consumer ''is not always given access to the information in [their] file.'' [4] In light of its broad remedial and consumer protection purposes, courts have recognized that the FCRA ''must be read in a liberal manner in order to effectuate the congressional intent underlying it.'' [5]

The FCRA also promotes transparency of the credit reporting system to consumers in many ways, including by generally requiring that consumer reporting agencies disclose to consumers all information in their file upon request. Under section 609(a), a consumer reporting agency must, upon request, clearly and accurately disclose to the consumer ''[a]ll information in the consumer's file at the time of the request'' and ''[t]he sources of the information.'' [6] This requirement applies to all consumer reporting agencies.[7] Consumers are entitled to free file disclosures in many circumstances. For example, each nationwide consumer reporting agency and nationwide specialty consumer reporting agency, including any nationwide tenant screening or employment background screening company, must provide at

[1] 85 FR 77987 (Dec. 3, 2020).

[2] *See* 15 U.S.C. 1681–1681x.

[3] *Safeco Ins. Co. of Am.* v. *Barr,* 551 U.S. 47, 52 (2007); *see also* 15 U.S.C. 1681 (recognizing ''a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy''); S. Rep. No. 91–517, at 1 (1969) (noting that purpose of the statute is, in part, to ''prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report'' and to ''prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information'').

[4] S. Rep. No. 91–517, at 3 (1969) (noting, as an example of this problem, that ''[i]nsurance reporting firms generally do not admit to making a report on an individual and ordinarily will not reveal the contents of their file to [them]. Credit bureaus sometimes build roadblocks in the path of the consumer.''). When introducing the bill that would become the FCRA, Senator Proxmire stated that ''[m]any credit reporting agencies refuse to show consumers their files possibly out of fear of litigation and partly to protect its information sources.'' 115 Cong. Rec. 2412 (1969).

[5] *See, e.g.,* Fed. Trade Comm'n, *40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations,* at 32 (2011); *Cortez* v. *Trans Union, LLC,* 617 F.3d 688, 706 (3rd Cir. 2010); *Guimond* v. *Trans Union Credit Info. Co.,* 45 F.3d 1329, 1333 (9th Cir. 1995) (''[The FCRA] was crafted to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner. These consumer[-]oriented objectives support a liberal construction of the FCRA'' (citations omitted).).

[6] *See* 15 U.S.C. 1681g(a). This requirement is subject to several exceptions. For example, consumer reporting agencies are not required to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer. *See* 15 U.S.C. 1681g(a)(1)(B). The Consumer Credit Reporting Reform Act of 1996 revised FCRA section 609(a) to require that consumers receive all information in the file rather than only the ''nature and substance'' of the information. Public Law 104–208, 110 Stat. 3009 (1996).

[7] *See* 15 U.S.C. 1681a(f) (defining ''consumer reporting agency'').