

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV95-989-3PR]

Change of Desirable Carryout Used in Computing Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the desirable carryout levels which are used in computing the yearly trade demand for California raisins. The trade demand is used to help determine the volume regulation percentages for each crop year, if necessary. The desirable carryout would be reduced from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995-96 crop year and to two months of shipments in subsequent crop years. The Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order, believes that the current desirable carryout level results in excessive supplies of marketable tonnage early in the crop year. This proposal would contribute to the orderly marketing of California raisins by mitigating the oversupply of raisins early in the crop year, thus stabilizing the market conditions for producers and handlers.

DATES: Comments must be received by July 6, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, or faxed to (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, or fax (209) 487-5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2829, or fax (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." This 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal would reduce the desirable carryout for the 1995-96 crop year, beginning August 1, 1995, through July 31, 1996, and for subsequent crop years. This proposal 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 the Secretary 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 the Secretary 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 in equity to review the Secretary's ruling

on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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 marketing order and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. No more than eight handlers and a majority of producers of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining eight handlers have sales less than \$5,000,000, excluding receipts from any other sources.

This proposed rule would change section 989.154 of the administrative rules and regulations of the raisin marketing order. The Committee recommended by a vote of 31 to 15 at its April 28, 1995, meeting, to adjust the desirable carryout level in section 989.154 from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995-96 crop year and to two months of shipments in subsequent crop years. The crop year includes the 12-month period August 1 through July 31.

The desirable carryout level is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are harvested and available for market.

Currently, section 989.154 provides that the desirable carryout levels shall be equal to the shipments of free tonnage to all outlets for each varietal type during the months of August, September, and one-half of the total shipments for the month of October of the prior crop year.

The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation percentages for each crop year, if necessary.

Beginning in the 1991-92 crop year the desirable carryout was reduced from three months of shipments to two and one-half months of shipments. It was determined that the use of the three month desirable carryout level resulted in excessive supplies of marketable tonnage early in the season.

The Committee has used the two and one-half month desirable carryout figure for four crop years and has determined that the use of this figure also results in an excessive supply of free tonnage at the beginning of the marketing season. A majority of the Committee members believes that this causes unstable market conditions during the early part of the crop year.

To correct the oversupply of marketable raisin tonnage early in the season, the Committee has recommended that the desirable carryout levels be revised from two and one-half months of the prior year's shipments to two and one-fourth months of the prior year's shipments for the 1995-96 crop year and to two months of the prior year's shipments for subsequent crop years.

The change in the desirable carryout levels would reduce the trade demand and the free tonnage percentage, and would make less free tonnage available to handlers for immediate use. However, handlers would still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers during November and other releases of reserve pool raisins available under the marketing order. The 10 plus 10 offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this proposed rule would tighten the supply of raisins early in the season, handlers would still have the opportunity to obtain additional

supplies to meet market needs, if needed later in the season.

This proposal is intended to stabilize the early season raisin market. Bringing early season supplies in line with market needs is expected to stabilize market prices. This price stabilization should make raisin buyers less likely to postpone their purchases. Thus, decreasing the desirable carryout could strengthen the market and increase shipments, which would benefit raisin producers and handlers.

One alternative that was discussed by the Committee prior to recommending this proposed change was to immediately set the desirable carryout level at two months of the prior year's shipments. It was determined that this was too rapid an adjustment and that first setting the desirable carryout levels at two and one-quarter months for the 1995-96 season and two months in subsequent crop years would be a more prudent approach.

Another alternative considered was setting the desirable carryout at a fixed tonnage. However, this alternative does not allow the desirable carryout to fluctuate with changing market conditions from year to year.

Those voting in opposition to the recommendation to reduce the desirable carryout level believed that the marketing order should not further restrict supplies during the early part of the crop year. However, the following table shows that adequate supplies of Natural (sun-dried) Seedless raisins have been available early in the crop year to meet demand. Natural (sun-dried) Seedless raisins represent about 90 percent of all raisins produced in California. The other two varieties which had reserve pools for the 1994-95 crop year, Zante Currant raisins and Other Seedless raisins, had carryins far exceeding the annual trade demand. "Carryin" is synonymous with the "carryout" of the preceding crop year. All figures are in natural condition tons.

Crop year	Desirable carryin (Aug, Sept and 1/2 Oct shipments) (tons)	Physical carryin (tons)	Aug/Sept shipments (tons)
1994-95	84,671	92,248	64,374
1993-94	81,867	93,752	67,784
1992-93	82,591	115,440	65,495
1991-92	84,541	109,306	65,613

The desirable carryin is set to meet the demand for the early part of the crop year (August and September) before the new crop becomes available. The actual physical carryin has far exceeded the

desirable carryin and has resulted in an oversupply of free tonnage during the early part of the crop year. The reduction in desirable carryout would contribute to correcting the problem by adjusting the free tonnage market supply, which would bring it more in line with demand.

The desirable carryout levels that would be established by this proposed rule would apply uniformly to all handlers in the industry, whether small or large, and there would be no known additional costs incurred by small handlers. The stabilizing effects of the revised desirable carryout levels would impact both small and large handlers positively by helping them maintain and expand markets.

In the event that the prior year's shipments are limited because of crop conditions, a proviso in section 989.154 allows the committee to select the total shipments during the months of August, September and one-half of the total shipments for October during one of the three years preceding the prior crop year. Consistent with the need to reduce early season supplies, this proposed rule would make a corresponding revision to this proviso, by changing the total shipments from August, September, and one-half of the total shipments for October to the total shipments from August and September only.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the order requires that the committee meet on or before August 15 to compute and announce the trade demand. As indicated earlier, the desirable carryover is an important factor in that calculation. Thus, a decision on whether to issue the Committee's recommendation must be made prior to that date. A longer comment period would not provide an adequate amount of time to complete this rulemaking by that date. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be 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. Section 989.154 is revised to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, for each varietal type, converted to a natural condition basis: *Provided*, That the desirable carryout levels to be used in computing and announcing the 1995-96 crop year's marketing policy shall be equal to the total 1994 shipments of free tonnage for the months of August and September, and one-fourth of the total shipments for the month of October: *Provided further*, That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September during one of the three crop years preceding the prior crop year.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-15106 Filed 6-20-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 1124 and 1135

[Docket Nos. AO-368-A25, AO-380-A15; DA-95-01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals to modify the pooling standards in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Federal milk orders. The hearing will also consider proposals to amend the Pacific Northwest order by expanding the marketing area to include two additional counties, modifying the multiple component pricing plan, providing the market administrator with authority to revise pooling standards and issue a "call" for milk if needed,

and modifying the producer-handler definition. The hearing was requested by Darigold Farms, a cooperative association that represents a large portion of the producers on the two orders.

DATES: The hearing will convene at 9 a.m. on July 11, 1995.

ADDRESSES: The hearing will be held at the Red Lion Hotel, Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232 (503) 281-6111.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Red Lion Hotel, Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232, beginning at 9 a.m., on Tuesday, July 11, 1995, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the

probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The information collection requirements in the order provisions proposed to be amended in this notice of hearing have been previously approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581-0032.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary 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 the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with six copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR Parts 1124 and 1135 continue to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.