

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV99-989-3 IFR]

#### Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 1998-99 Zante Currant Raisins

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

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

**SUMMARY:** This rule establishes final volume regulation percentages for 1998-99 Zante Currant raisins covered 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 (Committee). The volume regulation percentages are 85 percent free and 15 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. The volume regulation percentages are intended to help the industry manage its supply of Zante Currant raisins and strengthen market conditions.

**DATES:** *Effective:* March 9, 1999.

Comments received by May 7, 1999 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, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (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:**

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, or Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail:

Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Zante Currant raisins for the 1998-99 crop year, which began August 1, 1998, and ends July 31, 1999. 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 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 an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes final volume regulation percentages for 1998-99 crop Zante Currant raisins covered under the order. The volume regulation percentages are 85 percent free and 15 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. The volume regulation percentages are intended to help the industry manage its supply of Zante Currant raisins and strengthen market conditions. Final percentages were recommended by the Committee at a meeting on February 11, 1999.

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 13, 1998, to review shipment and inventory data, and other matters relating to the

supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one-half of October. In accordance with these provisions, the Committee computed and announced a 1998-99 trade demand for Zante Currant raisins at 3,215 tons as shown below.

COMPUTED TRADE DEMAND  
[Natural condition tons]

	Zante Currant raisins
Prior year's shipments .....	4,121
Multiplied by 90 percent .....	0.90
Equals adjusted base .....	3,709
Minus carryin inventory .....	1,188
Plus desirable carryout .....	694
Equals computed trade demand	3,215

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

The 1998-99 crop was unusually late because of the combined effect of adverse crop conditions during the spring of 1998 created by the weather phenomenon known as El Nino, scattered rain during the fall harvest, and a shortage of labor once the grapes were ready for harvest. The crop is normally harvested during late August and early September; this season's crop was harvested about 3-4 weeks later.

Because of the late crop, the Committee met on October 8, 1998, and announced preliminary crop estimates for all nine varietal types of raisins covered under the order. To guard against an underestimation of the crop, the Committee computed preliminary volume regulation percentages for five of the nine varietal types of raisins covered under the order—Dipped

Seedless, Natural (sun-dried) Seedless (Naturals), Oleate and Related Seedless, Other Seedless, and Zante Currant raisins. The total crop was initially estimated at 321,486 tons.

As more information became available during the following months, the Committee determined that volume regulation was only warranted for Zante Currant raisins. The other varietal types of raisins for which preliminary percentages were computed are produced from grapes that mature later than Zante Currants, and thus the crop sizes for these varietal types were more adversely affected by the poor weather conditions and labor problems. The Committee ultimately determined that the supplies of these other varietal types would be less than or close to their computed trade demands, and that volume regulation percentages were not needed. Based on the most recent information available, the total crop estimate was reduced from 321,486 to 276,510 tons. This is the first time in 16 years that volume regulation was not implemented for Naturals, the major varietal type of California raisin (crop estimate reduced from 280,092 to 235,000 tons, about 35 percent lower than the 10-year average of 360,183 tons). As in past seasons, the Committee submitted its marketing policy to the Department for review.

Regarding Zante Currant raisins, the Committee announced its preliminary crop estimate at its October 1998 meeting at 3,684 tons. As indicated in the preceding paragraph, Zante Currants mature earlier than the other varietal types of raisins covered under the order. Thus, producers were able to harvest their Zante Currants before it rained in the production area and before labor was in short supply. With the preliminary crop estimate (3,684 tons), 1997-98 carryin inventory (1,188 tons), and reserve raisins released for free use through an export program (483 tons) totaling to a supply of 5,355 tons, about 66 percent higher than trade demand (3,215 tons), and the 1997-98 carryin inventory (1,188 tons) about 71 percent higher than the desirable inventory (694 tons), the Committee determined that volume regulation for Zante Currant raisins was warranted.

At the October meeting, the Committee also computed preliminary free and reserve percentages for Zante Currants which released 65 percent of the computed trade demand since the field price had not been established. The preliminary percentages were 57 percent free and 43 percent reserve. These percentages were modified to release 85 percent of the trade demand

on October 16, 1998 when the Zante Currant field price was established. The Zante Currant preliminary percentages were thus modified to 74 percent free and 26 percent reserve. The Committee met on November 13, 1998, and announced interim percentages for Zante Currant raisins at 85 percent free and 15 percent reserve which, based on the 3,684 ton crop estimate, released less than the computed trade demand. On January 15, 1999, the Committee revised its crop estimate for Zante Currants from 3,684 to 3,801 tons.

Various programs to utilize reserve Zante Currant raisins were implemented when volume regulation was in effect during the 1994-95, 1995-96, and 1997-98 seasons to help reduce inventories, and help strengthen total producer prices (which includes proceeds from both free tonnage plus reserve pool Zante Currants) from \$412.56 per ton in 1994-95 to an estimated high of \$730 per ton in 1997-98. The Committee is implementing a reserve program this year which is expected to help the industry export more Zante Currants, thereby reducing the industry's oversupply, helping to build export markets, and ultimately improving producer returns.

Without such programs, the Committee estimates that its export shipments would be reduced, thereby reducing overall Zante Currant shipments for the crop year. Reduced shipments for the current year would create a high carryin inventory which would result in a lower computed trade demand for next year, a lower free tonnage percentage, should volume regulation be implemented, and likely reduced returns to 1999-2000 crop raisin producers. The implementation of volume regulation for 1998-99 Zante Currant raisins is expected to help manage supply and strengthen market conditions.

As required under § 989.54(d) of the order, the Committee recommended to the Secretary at its meeting on February 11, 1999, final free and reserve percentages for Zante Currant raisins which, when applied to the final production estimate, will tend to release the full trade demand for Zante Currants. With the increased crop estimate of 3,801 tons, final percentages computed to the same figures as the interim percentages—85 percent free and 15 percent reserve. The Committee's calculations to arrive at final percentages are shown in the table below.

FINAL VOLUME REGULATION  
PERCENTAGES

[Tonnage as natural condition weight]

	Zante Currant raisins
Trade demand .....	3,215
Divided by crop estimate .....	3,801
Equals free percentage .....	85
100 minus free percentage equals reserve percentage .....	15

In addition, the Department's "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for Zante Currants by the establishment of final percentages which release 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. Handlers may sell their 10 plus 10 raisins to any market. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use.

About 824 tons of raisins will be made available in the 10 plus 10 offers (which includes 423 tons of remaining 1997 reserve Zante Currants), or 412 tons per offer. Both offers will be held simultaneously in March 1999. Adding the 824 tons of 10 plus 10 raisins to the 3,215 ton trade demand figure, plus 1,188 tons of 1997-98 carryin inventory equates to about 5,227 tons natural condition raisins or 4,645 tons packed raisins that will be made available for free use, or to the primary market. This is 127 percent of the quantity of Zante Currants shipped in 1997 (4,121 tons natural condition tons or 3,662 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. These additional offers of reserve raisins

would thus make even more raisins available to primary markets which is consistent with the Department's Guidelines.

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. Almost all of the 20 handlers handled, and about 130 of the 4,500 raisin producers produced Zante Currants during the 1998-99 crop year. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. 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, excluding receipts from any other sources.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 1998-99 crop Zante Currant raisins. The volume regulation percentages are 85 percent free and 15 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order. Volume regulation is warranted for Zante Currants this season because the crop estimate of 3,801 tons combined with the 1997-98 carryin inventory of 1,188 tons, plus 483 tons of reserve raisins released for free use

through an export program, results in a supply of 5,472 tons which exceeds the trade demand of 3,215 tons by about 70 percent. The volume regulation percentages are intended to help the industry manage its supply of Zante Currant raisins and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

The free and reserve percentages established by this rule release the full trade demand and apply uniformly to all handlers in the industry, regardless of size. With the exception of the 1996-97 season, small and large Zante Currant raisin producers and handlers have been operating under volume regulation percentages every year since 1994-95. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins which they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of volume regulation impact both small and large handlers positively by helping them maintain orderly marketing conditions by managing supply.

Various programs to utilize reserve Zante Currant raisins were implemented when volume regulation was in effect during the 1994-95, 1995-96, and 1997-98 seasons. As shown in the table following this paragraph, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (which includes proceeds from both free tonnage plus reserve pool Zante Currants) from \$412.56 per ton in 1994-95 to an estimated high of \$730 per ton in 1997-98. The Committee is implementing a reserve program this year which is expected to help the industry export more Zante Currants, thereby reducing the industry's oversupply, helping to build export markets, and ultimately improving producer returns.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[\*Natural condition tons]

Crop Year	Production*	Inventory*		Total season average producer prices (per ton)
		Desirable	Physical	
1994-95 .....	5,377	837	4,364	\$412.56
1995-96 .....	3,294	782	2,890	711.32
1996-97 .....	4,491	987	549	<sup>1</sup> 1,150.00
1997-98 .....	4,826	694	1,188	730.00

<sup>1</sup> No volume regulation.

Free and reserve percentages are established by variety, and only in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended that volume regulation was only warranted for Zante Currant raisins this season. Preliminary volume regulation percentages were computed and announced in October 1998 for four other varietal types of California raisins. As more information became available in the following months, the Committee determined that the supplies of these other varietal types would be less than or close to their computed trade demands; thus, the Committee determined that volume regulation was not warranted.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied last season. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with

this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

After consideration of all relevant material 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.

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 1998-99 crop Zante Currant raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

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 relevant provisions of this part require that the percentages designated herein for the 1998-99 crop year apply to all Zante Currant raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1998-99 crop Zante Currant raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demand available to handlers; (3) handlers are aware of this action, which

the Committee unanimously recommended at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period and any comments received will be considered prior to finalization of 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 to read 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 989.252 is added to Subpart—Supplementary Regulations to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 989.252 Final free and reserve percentages for the 1998-99 crop year.**

The final percentages for standard Zante Currant raisins acquired by handlers during the crop year beginning on August 1, 1998, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Zante Currant .....	85	15

Dated: March 2, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-5551 Filed 3-5-99; 8:45 am]

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