DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–6 IFR]

Raisins Produced From Grapes Grown In California; Decrease in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the desirable carryout used to compute the yearly trade demand for 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). This rule decreases the amount of tonnage available early in the season and is expected to help the industry reduce an oversupply of California raisins.

DATES: Effective August 13, 2002. Comments must be received by August 22, 2002.

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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: moab.docketclerk@usda.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.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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.*

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 in equity 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 decreases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule decreases the desirable carryout for Natural (sun-dried) Seedless (NS) raisins from a rolling average of 3 to 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also decreases the desirable carryout for all other varietal types of raisins covered under the order from a rolling average of 3 to 2–1/2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. These actions were recommended by the Committee at meetings held on June 27 and July 24, 2002.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, 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. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better

reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons. The Committee continued this practice and, in 2000, desirable carryout was changed to equal a rolling average of 3 months of prior year's shipments (August, September, and October) over the past 5 years, dropping the high and low figures.

June 27, 2002, Recommendation

At a meeting on June 27, 2002, the Committee reviewed the desirable carryout level. Most Committee members believe that the supply of free tonnage raisins on the market has once again become excessive and is contributing to unstable market conditions. The following table illustrates how handler inventories for NS raisins have been building in recent years:

CARRYOUT INVENTORY OVER PAST 5 YEARS

Crop years	[1] Inventory
2001–02	[2] 133,815
2000–01	116,131
1999–2000	101,946
1998–99	98,291
1997–98	92,769

[1] Carryout inventory (natural condition tons).
[2] Estimated.

To moderate the oversupply of marketable tonnage early in the crop year, the Committee recommended reducing the desirable carryout level for all varietal types of raisins from a rolling average of 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments over the past 5 years, dropping the high and low figures. Committee staff estimated that this change to the desirable carryout level would reduce the 2002 trade demand for NS raisins by 15,000 tons. Decreasing the trade demand will reduce the free tonnage percentage, thus, making less free tonnage available to handlers for immediate use.

The Committee's vote on this action was 41 in favor and 5 opposed. Two of the members voting no commented that the large carryout at the end of the current crop year was due mainly to an extra 32,000 tons of reserve raisins that were purchased by handlers in September 2001. They believe that the carryout problem will correct itself next season. Other members commented that this action would create a hardship on producers by reducing the free tonnage percentage, thereby reducing producer payments. After much deliberation, the majority of Committee members supported reducing the desirable carryout from a rolling average of 3 to 2½ months of shipments over the past 5 years, dropping the high and low figures.

Most of the discussion at the Committee's meeting concerned the desirable carryout level for NS raisins. NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for NS raisins for the past several seasons. However, the Committee also believes that the decrease in desirable carryout should apply to the other varietal types of raisins covered under the order.

July 24, 2002, Revised Recommendation for NS Raisins

The raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a ''surplus pool and non-harvest'' program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee met on July 24, 2002, and revisited its oversupply situation and the desirable carryout issue. As a result, the Committee voted to further reduce the NS supply by decreasing the NS desirable carryout to a rolling average of 2 months (August and September) of prior year's shipments over the past 5 years, dropping the high and low figures, or 60,000 natural condition tons, whichever is higher. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

The Committee's vote on this action was 32 in favor, 10 opposed, and 2 abstentions. The members voting no were primarily concerned that this action would reduce the free tonnage percentage and producer payments.

Although this action will tighten the supply of raisins available early in the season, handlers will 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 and other releases of reserve raisins available under the order. The 10 plus 10 offers are two 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 rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional raisins from the 10 plus 10 offers. Thus, paragraph (a) in § 989.154 is modified accordingly.

Initial Regulatory Flexibility Act

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. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) 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 $750,000. 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. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule reduces the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule reduces the desirable carryout specified in paragraph (a) of § 989.154 for NS raisins from a rolling average of 3 months (August, September, and October) to 2 months (August and September) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also reduces the desirable carryout for all other varietal types covered under the order from 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, reducing the desirable carryout will reduce the trade demand and free tonnage percentage, thus making less raisins available to handlers early in the season. This action is expected to help reduce the burdensome supply of California raisins, thereby improving market conditions. Handlers will be provided opportunities throughout the crop year to purchase raisins from the reserve pool to increase their inventories.

The Committee considered a number of alternative levels of desirable carryout. The Committee has an appointed subcommittee, which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on June 26, 2002, and discussed desirable carryout. Some industry members supported maintaining the status quo. Others supported an incremental reduction to the desirable carryout, reducing the level to a rolling average of 2¾ months in 2002, and to a rolling average of 2½ months in 2003. The subcommittee ultimately recommended to the full Committee in June that the desirable carryout be reduced for all varietal types to a rolling average of 2½ months of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. The full Committee adopted the subcommittee's June recommendation.

As mentioned earlier, the raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a ''surplus pool and non-harvest'' program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee revisited the desirable carryout issue on July 24, 2002. At that meeting, the Committee reviewed an alternative proposal that would revise the trade demand formula by eliminating the adjustment for carryin and carryout inventory. The Committee also reviewed the merits of reducing the desirable carryout for NS raisins to a rolling average of 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. After much discussion, the majority of Committee members supported further reducing the desirable carryout for NS raisins to this level. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

This rule imposes no 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on June 26, 2002, and the Committee's meetings on June 27 and July 24, 2002, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on 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 the following Web site: *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 reducing the desirable carryout level specified under the order's regulations. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this 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) This rule needs to be in effect as soon as possible because the order specifies that the Committee must meet and compute trade demand on or before August 15 each year; (2) this action was recommended by more than two-thirds of the Committee members; (3) producers and handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a comment period for written comments and all comments timely received will be considered prior to finalization of this rule. Further, in view of the above, a ten-day comment period is deemed appropriate.

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 § 989.154, paragraph (a) is revised to read as follows:

989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout level to be used in computing and announcing a crop year's marketing policy for Natural (sun-dried) Seedless raisins shall be equal to the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. The desirable carryout level to be used in computing and announcing a crop year's marketing policy for all other varietal types of raisins specified in § 989.110 shall be equal to the total shipments of free tonnage during August, September, and one-half of October for each of the past 5 crop years, for each such varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

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Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20440 Filed 8–8–02; 12:46 pm]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–023–2]

Microchip Implants as an Official Form of Identification for Pet Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. The regulations have previously provided only for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This action provides for the use of an additional means of identifying certain U.S. origin pet birds while continuing to provide protection against the introduction of communicable poultry diseases into the United States.

EFFECTIVE DATE: September 11, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) regulate the importation of certain animals and birds, including pet birds, to prevent the introduction of communicable diseases of livestock and poultry.

On January 11, 2002, we published in the **Federal Register** (67 FR 1418–1419, Docket No. 01–023–1) a proposal to amend the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States.

We solicited comments concerning our proposal for 60 days ending March 12, 2002. We received four comments by that date. They were from private citizens, one breeder, and one group of students who had conducted an informal survey of seven local avian veterinarians and pet stores. All of the commenters were in favor of allowing the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. One commenter did suggest that a public hearing might be necessary ''to provide affected parties an opportunity to present information that will later go into consideration as the final amendment is made.'' Given the limited scope of the rulemaking and the small number of commenters who responded to the proposal, we find that a public hearing is unnecessary.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. The regulations have previously provided only for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This action provides for the use of an additional means of identifying certain U.S. origin pet birds.

The groups affected by this action are pet bird owners who travel with their birds outside the United States and microchip manufacturers. According to the port of entry records of the Animal and Plant Health Inspection Service (APHIS), approximately 400 bird owners traveled outside of the United States with their pet birds in calendar year 2000. Under this final rule, those bird owners will be allowed to use microchip identification instead of the leg bands or tattoos that had been provided for by the regulations. Bird owners will benefit from this change because it is becoming more difficult to find a veterinarian who carries leg bands for pet bird identification, and tattoos are rarely used to identify birds any more. Microchips will thus make the task of identifying a pet bird before leaving the United States more convenient. In most cases, an APHIS inspector at the port of entry will be able use a microchip scanner to confirm the identity of the bird without handling the bird or removing it from the cage, thus avoiding additional stress on the bird.

Bird owners who choose to identify their birds with a microchip will have to pay $25 to $40 per microchip plus the cost of the veterinary office visit to insert the microchip. The cost of the microchips is projected to be slightly higher than the conventional leg band, although current costs for leg bands and tattoos are not available due to the lack of veterinarians who will perform these services.

Microchip manufacturers may benefit from a slight increase in microchip sales generated by this rule. It appears that all potentially affected microchip manufacturers (NAICS code 334111) are small entities, according to Small Business Administration criteria (i.e., 1,000 or fewer employees).

In summary, this rule provides pet bird owners with an additional means of identifying their pet birds while allowing APHIS to maintain the high level of security required in order to keep avian diseases, such as exotic Newcastle disease and highly pathogenic avian influenza, from entering the United States.