

production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers would not be precluded from submitting other information substantiating production if those producers desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

(2) For purposes of the raisin diversion program, a partial production unit must have two permanent, contiguous boundaries (either natural or man-made).

* * * * *

Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-1965 Filed 1-23-03; 5:09 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02-989-5 FIR]

Raisins Produced From Grapes Grown in California; Additional Opportunity for Participation in 2002 Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with change, an interim final rule that allowed producers an additional opportunity to participate in the 2002 raisin diversion program (RDP). The RDP is authorized 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 (RAC). This

action was intended to help reduce the burdensome oversupply affecting the California raisin industry.

EFFECTIVE DATE: January 29, 2003.

FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, 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, 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."

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 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.

A 2002 RDP for Natural (sun-dried) Seedless (NS) raisins was established in November 2001. A total of 54,086 tons of 2001 crop reserve raisins was allocated to the program. This rule continues in effect a rule that allowed producers an additional opportunity to participate in the 2002 RDP. An additional 25,000 tons of 2001 crop reserve raisins was allocated to the RDP. The additional program applied to producers who agreed to remove vines from production, and was intended to help the industry reduce its burdensome oversupply. The action was recommended by the RAC at a meeting on May 30, 2002, by a vote of 45 in favor, 1 opposed (member opposed because the program did not provide for a moratorium on replanting), and 1 abstained.

Volume Regulation Provisions

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 RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures are specified in § 989.156.

Pursuant to these sections, the RAC must meet each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers wishing to participate in the RDP must submit an application to the RAC. The RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the

tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Initial 2002 NS Diversion Program

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001-02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projected a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the initial 2002 RDP. The RAC increased this amount to 54,086 tons at a meeting on January 11, 2002.

Of the 54,086 tons, 49,086 tons were made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who planned to remove vines receiving priority over those who planned to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give

priority to applicants who agree to remove vines. Another 5,000 tons were made available to approved producers who submitted applications to the RAC from December 21, 2001, through May 1, 2002, and planned to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Harvest costs for the initial RDP were announced by the RAC at \$340 per ton, and a production cap of 2.0 tons per acre was established for the program. The production cap limits the yield per acre that a producer can claim. The 2.0-ton per acre production cap was established in an interim final rule that was published in the **Federal Register** on March 15, 2002 (67 FR 11555). A final rule was published on May 14, 2002 (67 FR 34383).

Under the initial RDP, the RAC received applications from producers accounting for 40,788 tons of raisins that would be removed from production by spur pruning vines, and 7,704 tons of raisins that would be removed from production by removing vines. Using the production cap of 2.0 tons per acre, about 3,850 acres should be removed from production through vine removal (7,704 tons divided by 2.0 tons per acre). The following is a summary of the tonnage allocated and participation in the initial 2002 RDP:

INITIAL 2002 RDP

	Allotted tonnage	Applications from producers
Dec. 20 Deadline	49,086 tons (vine removal and spur prune, with priority for vine removal).	40,788 tons (spur prune); 6,896 tons (vine removal)
May 1 Deadline	5,000 tons (vine removal only)	808 tons (vine removal).
Total	54,086 tons	40,788 tons (spur prune); 7,704 tons (vine removal).

RAC Recommendation

The RAC met on May 30, 2002, and recommended adding an additional opportunity for producers to participate in the 2002 NS RDP in view of the oversupply situation affecting the California raisin industry. Specifically, the RAC allocated an additional 25,000 tons of 2001 NS reserve raisins to the program. The additional program applied to producers who agreed to remove vines, and included a bonus for participating producers. Producers received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). For example, if an applicant's verified production was 1.7 tons per acre, the applicant received credit for 2.55 tons per acre (1.7 tons

times 1.5). If an applicant's verified production was 2.5 tons per acre, the applicant received credit for 3.0 tons per acre (2.0 tons times 1.5). Authority for the RAC to issue diversion certificates in an amount greater than the creditable fruit weight produced on the production unit is provided in § 989.56(c) of the order. The bonus was intended to encourage participation in the program.

The additional opportunity to participate in the 2002 RDP was available to producers who did not participate in the initial 2002 program ("new participants"), and to approved participants in the initial 2002 RDP who curtailed their production by spur pruning their vines ("early season spur pruners"). Producers wishing to participate in the program had to file an application with the RAC by July 8,

2002. Priority was given to new participants. If the production applied for had exceeded the 25,000 tons added to the program, a lottery would have been held to allocate the tonnage among the applicants, pursuant to applicable procedures specified in § 989.156(d). Under the additional opportunity program, the RAC received applications from producers accounting for an estimated 2,265 acres and 5,920 tons of raisins that would be removed from production by removing vines.

Harvest costs for the additional opportunity program for "early season spur pruners" remained at \$340 per ton, while harvest costs for new participants were \$100 per ton. Because harvest costs are deducted from the payment producers receive from handlers for their diversion certificates, a reduction

in harvest costs results in a larger payment to producers for the certificates. The reduction in harvest costs for new participants and resulting increased payment was intended to take into account in producing a 2002 crop up to time of removal, the the cultural and some harvest costs incurred by such producers.

Under the additional opportunity program, vines had to either be removed, or chain sawed at the base by July 31, 2002. RAC staff verified that the vines had been removed or adequately chain sawed. RAC staff later re-inspected vines that had been chain sawed to ensure that the remainder of the vine had been removed.

Accordingly, a new paragraph (u) was added to § 989.156 specifying the provisions of the additional opportunity program with applicable time frames. In addition, necessary conforming changes were made to paragraphs (a), (q), and (s) of § 989.156.

The interim final rule stated that, when redeeming certificates for 2001 raisin handlers would pay the RAC the harvest cost plus payment for bins and for receiving, storing, fumigating, and handling the reserve raisins. The Committee believed that RDP certificates should be treated like "raisins", and handlers should pay the same as if they had to buy raisins directly from producers. Bin rental is included in the cost of raisins bought directly from producers and the Committee believed that this cost should be included in the cost of raisins bought through the RDP. The bin payment was set at \$20. However, some Committee members believed that this fee contributed to handler delays/reluctance in buying 2001 RDP certificates for 2000-01 reserve pool raisins from producers. To avoid this in purchasing 2002 RDP certificates for 2001-02 reserve pool raisins, the Committee on August 14, 2002, unanimously voted to waive the \$20 per ton bin fee.

Final Regulatory Flexibility Analysis

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 final 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 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 continues to revise § 989.156 of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. A 2002 RDP for NS raisins was established in November 2001, and 54,086 tons of 2001 crop reserve raisins were allocated to the program. This rule continues in effect a rule that allowed producers an additional opportunity to participate in the 2002 RDP in view of the oversupply situation affecting the California raisin industry. An additional 25,000 tons of 2001 crop reserve raisins was allocated to the RDP. The additional program applied to producers who agreed to remove vines from production, and was intended to help the industry reduce its burdensome oversupply. Under the program, the RAC received applications from producers accounting for an estimated 2,265 acres, and 5,920 tons of raisins that would be removed from production. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the additional opportunity program was intended to help the industry as a whole reduce its burdensome oversupply. The California raisin industry has experienced successive crop years of high production. The 10-year average for deliveries of NS raisins to handlers is 344,303 tons. NS raisin deliveries for the 2000 crop year were 432,616 tons, and deliveries for the 2001 crop year were 377,328 tons. As previously stated,

the initial RDP removed about 3,850 acres from production. It is estimated that the additional opportunity program removed another 2,265 acres from production, for a combined total of about 6,115 acres, which helped the industry reduce its oversupply.

Regarding the impact of this action on producers, the program provided producers an additional opportunity to earn some income for removing their vineyards from production. Participating producers received a bonus for removing their vines. They received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). Producers will sell their certificates to handlers and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the additional RDP were announced by the RAC at \$100 per ton for "new participants" (producers who did not participate in the initial 2002 RDP), and \$340 per ton for "early season spur pruners" (approved participants in the initial 2002 RDP who curtailed production by spur pruning their vines).

Regarding the impact on handlers, handlers will redeem certificates for 2001 crop NS raisins and pay the RAC the applicable harvest cost (\$100 per ton for new vine pull participants, and \$340 per ton for early season spur pruners) plus and for receiving, storing, fumigating, handling (\$46 per ton), and inspecting (\$9.00 per ton). The program will return \$155 per ton for new participant certificates, and \$395 per ton for remaining certificates to the 2001 NS reserve pool. A bin fee, which has been one of the charges has been dropped because of delays in purchases of RDP certificates. Such income to the reserve pool could be used to pay remaining pool expenses or be distributed to 2001 NS reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC. There was discussion at the meeting regarding whether the program should include a moratorium on replanting. At the time, there was no authority for a moratorium on replanting. Some members expressed concern that producers may remove their vines and replant with new systems that produce higher yields, thereby contributing to more oversupply. At the time, there was no authority for a moratorium on replanting.

There was some discussion at the meeting about the impact of adding an additional 25,000 tons of 2001 crop NS reserve raisins to the 2002 supply. Through the order's mathematical formula for volume regulation, additional 2002 supply will reduce the 2002 free tonnage percentage. This could reduce returns for producers since producers are paid a field price for the free tonnage percentage of their crop. There was some consideration of allowing handlers to redeem a portion of their certificates for 2001 reserve raisins and a portion for 2002 crop reserve raisins. However, the current order only provides authority for handlers to redeem certificates for reserve raisins from the prior crop year.

There was also discussion at the meeting about giving smaller producers some priority in the program. For example, the program could have allowed 2 days for producers with production units of 80 acres to apply, and then the program could have been opened up to other applicants. However, this was not recommended over a program providing the same opportunity to all eligible producers.

This rule does not measurably add to the current burden on reporting or recordkeeping requirements for either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the RDP application) has been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. 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.

Further, the RAC's meeting on May 30, 2002, where this action was deliberated was a public meeting widely publicized throughout the raisin industry. All interested persons were invited to attend the meeting and participate in the industry's deliberations.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <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.

Additionally, the interim final rule published in the **Federal Register** on

June 24, 2002 (67 FR 42471) inadvertently omitted the last three sentences in the regulatory text in paragraph (a)(1) of § 989.156. Those sentences were included in another interim final rule published on November 29, 2002 (67 FR 71072). The November 2002 interim final rule made additional revisions to paragraphs (a) and (s) of § 989.156 as they originally appeared in the June 2002 interim final rule.

Committee staff mailed copies of the interim final rule to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period that ended on July 9, 2002. Five comments were received.

A raisin producer who had participated in the early season RDP and curtailed production by removing vines wanted to be compensated at the same rate as producers under the late season RDP, and another wanted to receive the 1.5 ton bonus for each ton of creditable fruit weight removed. Under the early season RDP, harvest costs were announced by the RAC at \$340 per ton, a production cap of 2.0 tons per acre was established for the program, and producers received a diversion certificate from the RAC equal to the creditable fruit weight removed (up to a maximum of 2 tons per acre). Under the late season RDP, for vine removal only, producers received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit removed (up to a maximum of 3 tons per acre). This bonus was included as a condition of the late season RDP to encourage more vine removals. This was a reasonable addition given the industry's excess production capacity, and the oversupply situation currently burdening the industry.

In addition, harvest costs for the late season program were \$100 per ton where new participants were involved and \$340 in the case of "early season spur pruners" who decided to remove vines under the late season program. Because harvest costs are deducted from the payment producers receive from handlers for their diversion certificates, a reduction in harvest costs results in a larger payment to producers for the certificates. As already mentioned, the reduction in harvest costs for new participants and resulting increased payment was intended to take into account the cultural and some harvest costs incurred by such producers in

producing a 2002 crop up to the time of removal.

Two letters each signed by two raisin producers, who also handle raisins, were submitted by their attorney. These commenters opposed the late season RDP.

They contend that this program will harm the industry, that it lacks economic merit, and that it conflicts with both the letter and spirit of the raisin marketing order.

They stated that their equity in the 2001 reserve pool (the pool from which handlers purchasing RDP certificates will obtain raisins) will be reduced severely because of USDA's agreement to sell 2001 reserve pool raisins to farmers for \$100 per ton at the rate of 3 tons per acre (the conditions of the late season RDP) versus \$340 per ton at the rate of 2 tons per acre under the early season RDP. The commenters point out that § 989.67(d)(1) of raisin marketing order requires reserve tonnage raisins to be sold to handlers at prices and in a manner intended to maximize producer returns and achieve maximum disposition of such raisins by the time reserve tonnage raisins from the subsequent crop year are available.

Under the early season RDP, producers curtailing production through vine removal or other approved means received a diversion certificate equal to the quantity of raisins diverted up to a maximum of 2 tons per acre. Handlers purchasing certificates will pay the producer for the free tonnage applicable to the diversion certificate minus a \$340 per ton harvest cost for the diverted tonnage. New participants in the late season RDP received a diversion certificate equal to 1.5 times the tonnage diverted (up to a maximum of 3 tons per acre). Authority to issue diversion certificates in an amount greater than the creditable fruit weight produced on the production unit is specified in paragraph (c) of § 989.56. In this case, handlers will pay the producer for the free tonnage applicable to the diversion certificate for the diverted tonnage minus the \$100 per ton harvest cost fixed for late season RDP harvest costs. This means that producers selling diversion certificates with the \$100 per ton harvest cost will receive more money per ton than those selling certificates with the \$340 per ton cost. The reduced harvest costs for late season RDP participants were intended to recognize the cultural and some harvest costs such producers incurred in producing a 2002 crop up to the time of removal. This difference in payments is reasonable for this program.

The amount of money per ton generated for 2001 reserve pool equity

holders from the late season RDP for new participants would be \$155 per ton, and \$395 per ton for early season RDP participants, and early season spur pruners who decided to remove vines during the late season RDP. Handlers will redeem certificates for 2001 NS raisins and pay RAC the applicable harvest cost (\$100 per ton for new participants, and \$340 per ton for early season spur pruners and vine removers) plus payment for receiving, storing, fumigating, handling (\$46 per ton), and inspecting (\$9 per ton).

The difference between the two amounts for 2001 reserve pool equity holders is \$240 per ton. This reduction in returns to the 2001 reserve pool equity holders from the new participant late season RDP versus the early season RDP participants and early season spur pruners who decided to remove vines during the late season RDP was considered by RAC and determined to be reasonable under the circumstances. Under the late season RDP, RAC received applications from producers accounting for an estimated 2,265 acres and 5,920 tons of raisins that would be removed from production by removing vines. The RAC had approved 25,000 tons for this program.

Moreover, some in the industry believe that vine removals are needed now, rather than later, to start bringing production more closely in line with market needs. As the two producer/handlers stated, the industry needs to remove permanently 100,000 acres over time to align production with current market needs.

The two producer/handlers also mentioned that the reserve is supposed to fulfill the "orderly marketing" objective of the Act and marketing order by being available in case the new crop is substantially reduced by drought or post-harvest rain. They state that the 2001 crop reserve raisins could be worth much more in the event California were to experience a disastrous heat wave prior to or disastrous rain during harvest. Because of this, these two commenters ask USDA not to allow the RAC to implement a program (under the guise of reducing long-run supply) that risks market chaos and unreasonable fluctuations in supplies and prices. They state that it is improper to use the marketing order tools to protect a massive over-production situation from normal corrective market forces, especially when all of the cost of this waste falls on the existing equity holders in the 2001 reserve pool. However, the late season RDP was intended to assist in bringing supplies into closer balance with demand, and as

such, was a proper use of this marketing order tool.

These commenters also allege that the late season RDP is intended to support a handler's plan to finance improved trellis systems and per acre yields, and would encourage marginal producers to stay in the raisin business by helping to finance their transition to upgraded trellis systems that will nearly double existing per-acre yields. They contend that this program will even be more devastating to traditional raisin producers if producers who intended to sell fresh grapes into the winery or as table grapes participate in the late season RDP.

The two producer/handlers further contend that the industry's productive capacity will naturally decline overtime without the RDP program. The RAC's primary goal in recommending the late season vine removal RDP was to speedup and facilitate needed production capacity reductions. Given the industry's poor economic condition, and difficulties many in the industry are experiencing in obtaining operating funds from lending institutions, wholesale replanting on land from which grape vines have been removed under the RDP by current raisin producers, non-traditional raisin producers such as winery and table grape producers, and other investors outside the raisin industry would appear unlikely.

The two producer/handlers also believe that vine removal without at least a 5-year moratorium on replanting grape vines on that acreage will not be successful. The current supply and marketing problems, and financial difficulties facing the industry, may lessen interest in replanting the acreage from which vines have been removed with new grape varieties. Further, there is no authority for a replanting moratorium in the 2002 Raisin Diversion Program.

These commenters also suggested that USDA convene an industry summit to explore the various economic issues facing the California raisin industry. USDA stands ready to assist the industry in improving the marketing order and marketing order operations, and helping the industry overcome its current oversupply and financial problems.

Taking into account the forgoing, USDA continues to be of the view that the late season RDP as reflected in this action is consistent with the provisions of the marketing order and the Act.

A final comment was received from an official of a lending institution that has an extensive portfolio of agricultural loans for various commodities,

including raisins, in California. The commenter urged the RAC and USDA to make changes to the RDP vine removal application to adequately protect lenders in any vine removal or diversion program. According to the commenter, the current terms and conditions do not go far enough in ensuring that the producer applicant informs the lender of the producers planned participation. The commenter requested that such changes be made as soon as possible, but recognized that it was too late to implement such changes for the 2002 RDP.

Section 989.156(b) describes the application that producers must complete and submit to the RAC to participate in a RDP. The current application procedures, among other things, indicate that the producer's application must state that all persons with an equity interest in the raisins produced from the grapes grown on the production unit identified on the application must consent to the filing of the application. As mentioned before, the representative of an association of lending institutions believed that the current requirement of obtaining consent from all persons having an equity interest in the raisins produced from grapes grown on the production unit identified did not go far enough in protecting the interests of lending institutions. The commenter mentioned that the lending institution might not have an equity interest in the raisins produced, but might have an equity interest in the vines on the production unit on which the grapes were produced, or the land, as security for the loan.

To address the commenter's concern and further clarify the application process, the certification has been broadened to assure that all such persons are given an opportunity to consent to the producer's participation in the RDP. Section 989.156(b) is modified accordingly.

The modification to the RDP application has no additional impact on producers and handlers. It simply requires producers to certify that all persons with an equity interest in the raisins, vines, or land on which the grapes were produced have been given the opportunity to consent to the producer's participation in the RDP.

After consideration of all relevant material presented, including the information and recommendations submitted by the RAC, the comments received, 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2002 Raisin Diversion Program is well underway and this action should be made effective as soon as possible.

List of Subjects in 7 CFR Part 989

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 42471 on June 24, 2002, is adopted as a final rule with the following change:

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (b)(6) is revised as follows:

989.156 Raisin diversion program.

* * * * *

(b) * * *

(6) A statement that all persons with an equity interest in the grapes in the production unit to be diverted, in the vines, or the land on which the grapes were produced consent to the filing of the application.

* * * * *

Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1964 Filed 1–23–03; 5:09 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 2180–01]

RIN 1115–AG47

Establishment of a \$3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations, as required by

law, to provide for the collection of a \$3 fee for commercial vessel passengers previously exempt under section 286(e)(1) of the Immigration and Nationality Act (Act), other than passengers on Great Lakes ferries and other Great Lakes vessels. This rule amends the Service regulations to require certain commercial vessel operators or their ticketing agents to charge and collect a \$3 user fee from every commercial vessel passenger whose journey originated in the United States, Canada, Mexico, a territory or possession of the United States, or an adjacent island except those individuals exempted under section 286(e) of the Act.

DATES: This final rule is effective February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Penny Pastiva, Border Management Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street, NW., Room 5236, Washington, DC 20536, telephone (202) 514–6254.

SUPPLEMENTARY INFORMATION:

Authority To Collect an Immigration User Fee

In the 1987 Appropriations Act for the Department of Justice, Public Law 99–591, Congress directed the Service beginning in fiscal year (FY) 1987 to collect an immigration user fee for each passenger arriving in the United States by commercial air or sea conveyance (with limited exceptions). As provided by law, in section 286 of the Act, the user fees that are collected may be used, among other things, to:

- Provide immigration inspection and preinspection services for commercial aircraft and vessels;

- Provide overtime immigration inspection services for commercial aircraft or vessels;

- Administer debt recovery, including the establishment and operation of a national collections office;

- Expand, operate, and maintain information systems for nonimmigrant control and debt collection;

- Detect fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline and vessel personnel regarding such detection;

- Provide detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any inadmissible alien who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and,

- Administer removal and asylum screening proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels, including immigration removal proceedings resulting from the presentation of fraudulent documents and the failure to present documentation and for any inadmissible alien who has attempted illegal entry into the United States by avoiding immigration inspection at air or sea ports-of-entry.

Requirement To Charge a \$3 Inspection Fee

In section 109 of the Department of Justice Appropriations Act, 2002, Public Law 107–77, title I, enacted on November 28, 2001, Congress amended section 286(e) of the Act to authorize the Attorney General to charge and collect a user fee from certain previously-exempt commercial vessel passengers. Prior to the enactment of this law, commercial vessel passengers whose journeys originated in Canada, Mexico, a State, territory or possession of the United States, or an adjacent island, were statutorily exempt from paying the Immigration User Fee prescribed by section 286(d) of the Act. While these vessel passengers were exempt from paying the fee, the Service was still required to provide inspection services. This exemption resulted in the Service's inability to invest in necessary staffing and technology resources. The new fee will enhance inspection operations and related inspection activities that support seaport immigration inspection.

Section 202 of chapter 2, title I of the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Public Law 107–206, signed August 2, 2002, amended section 286(e)(3) of the Act to remove any discretionary authority not to collect the fee from commercial vessel passengers otherwise covered by the provision (principally, by changing “The Attorney General is authorized to charge and collect” to “The Attorney General shall charge and collect”).

Comments on the Service's Proposed Rule Implementing Section 286(e)(3) of the Act

The Service published a proposed rule in the **Federal Register** on April 3, 2002, at 67 FR 15753, authorizing the collection of a \$3 fee for certain commercial vessel passengers previously exempt under section 286(e)(1) of the Act. The proposed rule was published with a 30-day comment period, which closed on May 3, 2002. On May 14, 2002, the Service reopened