

Major categories in the budget recommended by the Board for 2003–04 include \$2,348,000 for program expenses, which includes marketing and production research projects, the salary for the production research director, the cost of the Board's crop acreage survey and production estimate, and compliance purchases, \$334,625 for employee expenses such as administrative and office salaries, payroll taxes and workers compensation, and other employee benefits, \$83,000 for office expenses such as rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture, \$82,000 for other operating expenses, such as management travel, field travel, Board expenses, general insurance, and financial audits, and \$15,725 as a reserve for contingencies. Budgeted expenses for these items in 2002–03 were \$2,438,403, \$333,100, \$80,500, \$79,500, and \$38,497, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended \$0.0101 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 283,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2003–04 could range between \$0.50 and \$0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2003–04 marketing year as a percentage of total grower revenue could range between 1.4 and 2 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all

interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on November 21, 2003 (68 FR 65629). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 20, 2004, and no comments were received.

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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board 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.

#### List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

#### PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984 which was published at 68 FR 65629 on November 21, 2003, is adopted as a final rule without change.

Dated: February 5, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV03–989–6 FIR]

#### Raisins Produced From Grapes Grown in California; Revision of Varietal Types

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that revised the list of varietal types of raisins specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action continues to combine the Oleate and Related Seedless varietal type (Oleates) with the Natural (sun-dried) Seedless varietal type (Naturals), and make conforming changes to the order's volume and quality regulations. This action addresses changing cultural practices in the California raisin industry.

**EFFECTIVE DATE:** March 15, 2004.

**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](mailto: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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to revise the list of varietal types of raisins specified under the order. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the RAC. The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action continues to combine the Oleate varietal type with the Natural varietal type, and make conforming changes to the order's volume and quality regulations. This action was unanimously recommended by the RAC at a meeting on May 15, 2003, and addresses changing cultural practices in the California raisin industry.

### Varietal Types

The order provides authority for quality and volume regulations that are applied according to varietal type of raisin. Section 989.10 of the order defines the term varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. That section includes a list of eight varietal types, and provides authority for the RAC, with the approval of USDA, to change this list. A description of these varietal types, along with additional varietal types, may be found in § 989.110 of the order's administrative rules and regulations.

Prior to implementation of the interim final rule (68 FR 42943), paragraph (a) in § 989.110 defined the Natural varietal type to include all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless (NTS) raisins which, for the purpose of expediting drying, have not been dipped in or sprayed with water, with or without soda, oil or other chemicals prior to or during the drying process. Naturals are the predominant varietal type of California raisin, comprising about 90 percent of California's raisin production.

Also prior to implementation of the interim final rule, paragraph (c) in § 989.110 defined the Oleate varietal type to include all raisins produced by sun-drying or artificial dehydration of seedless grapes which, in order to expedite drying, are dipped in or sprayed with water with soda, oil, Ethyl Oleate, Methyl Oleate or any other chemicals either while such grapes are on the vine or after they have been removed from the vine.

Cultural practices are evolving in the raisin industry in an effort to reduce production and harvest costs. Traditionally, most California raisins have been made by hand picking grapes from the vine and drying them in the sun on trays laid on the ground. This process is labor intensive and expensive. Thus, in an effort to reduce costs, some growers have switched to sun-drying their grapes on the vine, and then mechanically harvesting them ("dried on the vine" or DOV). A drying agent such as Oleate may be applied to the grapes on the vine to hasten the drying process.

Additionally, there is concern that Oleate could be applied to sun-dried Natural raisins, and that the raisins could be represented as Oleates to circumvent the volume regulations that are typically in effect for Naturals. With

the exception of the 1998-99 crop year, volume regulation has been in place for Naturals every year since 1983-84. (The raisin crop year (season) runs from August 1 through July 31.) For the 1992-93 through the 1999-2000 seasons, average acquisitions of Oleates were 441.38 tons. For the 2000-01 and 2001-02 seasons, Oleate acquisitions were 3,669 and 6,495 tons, respectively. Volume regulation was in place for the beginning of the 2001-02 season for Oleates, but was lifted in November 2001 due to no acquisitions up to that time. Once volume regulation was lifted, Oleates were acquired. For the 2002-03 season, the RAC recommended final volume regulation percentages for Oleates in January 2003. However, by the week ending February 1, 2003, Oleate acquisitions were at 2,121 tons, and far below the 5,268-ton trade demand. Because the supply of Oleates was well below demand, volume regulation was lifted in mid-February 2003. Since that time, 2002-03 Oleate acquisitions increased to 18,385 tons through July 31, 2003, the end of the 2002-03 crop year. Based on this data, and the fact that most raisins are typically acquired much earlier in the crop year, the RAC is concerned that Oleate could be sprayed on bins of Naturals and that the raisins could be represented as Oleates to circumvent volume regulation.

These different types of Oleate-treated grapes/raisins are difficult to distinguish from non-Oleate treated raisins. At its May 15, 2003, meeting, the RAC recommended eliminating the Oleate varietal type, and revising the Natural varietal type to include Oleates. Specifically, Naturals include all sun-dried raisins possessing similar identifiable characteristics as raisins produced from Natural Thompson Seedless grapes, or similar grape varieties, whether dried on trays or on the vine, with or without application of a drying agent that is a food-grade additive, such as, soda, oil, Ethyl Oleate, or Methyl Oleate prior to, during, or after the drying process. The RAC recommended using "accepted food-grade drying agent" in the definition rather than "drying agent that is a food-grade additive". USDA changed the RAC's recommendation so it conforms more closely to accepted U.S. Food and Drug Administration terminology. Soda was also added to the examples of drying agents because soda has been used by the industry for this purpose in past years. Accordingly, paragraph (c) in § 989.110 regarding Oleates was removed, and paragraph (a) regarding Naturals was revised to include Oleates.

Industry members considered the merits of revising the definition for Dipped Seedless raisins. Dipped Seedless includes all raisins produced by artificial dehydration of seedless grapes that possess characteristics similar to Thompson Seedless grapes which, in order to expedite drying, have been dipped in or sprayed with water only after such grapes have been removed from the vine. The current Oleate definition includes raisins produced by artificially dehydrating grapes with the application of a drying agent to the grapes. The question was raised regarding how raisins made from artificially dehydrated Oleate-treated grapes would be classified if sun-dried Oleates are included with Naturals. Industry members concluded that no such raisins are currently produced. Accordingly, the definition of Dipped Seedless raisins was not revised to include artificially dehydrated Oleate-treated grapes.

#### **Volume Regulation and Reserve Pool Requirements**

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.

Section 989.66 of the order specifies general requirements for reserve tonnage. Reserve tonnage acquired by handlers from producers and reserve tonnage transferred to a handler from the RAC must be held by the handler for the account of the RAC. Reserve tonnage must be stored separate and apart from other raisins and identified according to rules and procedures specified by the RAC and approved by the Secretary. Handlers may, under the direction and supervision of the RAC, substitute for any reserve tonnage raisins a like quantity of standard raisins of the same

varietal type and of the same or more recent year's production.

Section 989.166 of the order's administrative rules and regulations specifies additional requirements for reserve raisins. Paragraph (a)(1) of that section prescribes identification, delivery, and transfer requirements for Natural reserve raisins. Specifically, lots of Natural reserve raisins that have been dipped in or sprayed with water, with or without chemicals, prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless, must be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card which must remain affixed until the raisins are processed or disposed of as natural condition raisins. Additionally, such reserve raisins cannot be delivered to the RAC nor transferred to another handler without approval of the RAC or the receiving handler.

The above language in § 989.166(a)(1) regarding chemicals applied to Naturals for purposes other than to expedite drying was added to the regulations in 1984 and refers to MP-11, a fungicide. The language regarding Naturals produced from grapes other than Thompson Seedless was added in 1991. In these respective instances, some handlers had indicated that they would not pack MP-11 raisins nor raisins made from grapes other than Thompson Seedless. In both cases, the RAC determined that these categories of Naturals should be considered as Naturals for volume and quality control purposes, but that additional requirements should be in place regarding identification, delivery, and transfers of reserve raisins.

As the RAC considered the merits of combining Oleates with Naturals, some handlers indicated that they would not pack Naturals treated with a drying agent such as Oleate. Thus, at its May 2003 meeting, the RAC recommended revising § 989.166(a)(1) to include reserve Naturals treated with drying agents. Such reserve raisins must be tagged and identified accordingly, and cannot be delivered to the RAC nor transferred to another handler without the approval of the RAC or the receiving handler. Handlers with only Oleate-treated reserve can substitute non-Oleate treated free tonnage Naturals if necessary. The RAC also recommended adding in this section authority for the RAC to specify additional categories of Naturals that have been produced using other cultural practices and that will be subject to these additional requirements.

Any such additions will be made with USDA approval. This will give the RAC flexibility to address changing cultural practices regarding different categories of Naturals in the future. Section 989.166(a) was revised accordingly.

Another concern regarding this issue is the impact of volume regulation on handlers that may have built up a market for Oleate-treated raisins. There is concern that volume regulation would contribute to handlers losing this market. However, pursuant to § 989.66(b)(3), handlers of Oleate-treated Naturals have the flexibility to substitute free tonnage Naturals that will be acceptable to the RAC. Thus, handlers can substitute non-Oleate treated free tonnage Naturals for their Oleate-treated reserve raisins, and use their Oleate-treated fruit to meet their market needs.

#### **Quality Requirements**

This rule also continues to revise the quality requirements specified in the order's regulations to remove references to Oleates. Specifically, this rule continues to revise: the incoming quality requirements; the table of factors for converting between natural condition and processed weight; and the outgoing quality requirements. The details of these changes are discussed below.

#### **Incoming Quality Requirements**

Section 989.58(a) of the order provides authority for quality control regulations whereby natural condition raisins that are delivered from producers to handlers must meet certain incoming quality requirements. Section 989.701 of the order's regulations specifies minimum grade and condition standards for natural condition raisins for each varietal type. Prior to implementation of the interim final rule, paragraph (b) of that section specified requirements for three varietal types of raisins—Dipped Seedless, Oleate, and Other Seedless-Sulfured. Specifically, such raisins must have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall: (1) Be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) have a normal characteristic flavor and odor of properly prepared raisins; (3) contain no more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) not exceed 14 percent moisture; and (5) be of such quality and condition as can

be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the RAC. This rule continues to revise this paragraph to remove reference to the Oleate varietal type.

Paragraph (a) of § 989.701 specifies incoming quality requirements for Naturals, Monukka and Other Seedless raisins. This rule continues to combine Oleates with the Natural varietal type. Thus, the incoming quality requirements specified in § 989.701(a) now apply to Oleates. With the exception of the moisture requirement, the specifications in paragraphs (a) and (b) of § 989.701 are identical. Paragraph (a) specifies that Naturals, Monukkas, and Other Seedless raisins cannot exceed 16 percent moisture. The RAC's recommendation includes Oleates meeting a less restrictive moisture tolerance of 16 percent as opposed to the 14 percent required for Oleates prior to implementation of the interim final rule.

#### **Weight Dockage System**

Section 989.58(a) also contains authority for handlers to acquire natural condition raisins that fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system. Handler acquisitions of raisins and payments to producers are adjusted according to the percentage of substandard raisins in a lot, or the percentage of raisins that fall below certain levels of maturity. Section 989.210(a) of the order's regulations lists the varietal types of raisins that may be acquired pursuant to a weight dockage system. Sections 989.212 and 989.213 contain tables with dockage factors applicable to lots of raisins that fall outside the tolerances for substandard raisins and maturity, respectively, specified in § 989.701. The substandard and maturity dockage factors are identical for Oleates and Naturals. This rule continues to remove all references to Oleates that were contained in §§ 989.210(a), 989.212, and 989.213. This rule also continues to remove paragraph (e) in § 989.213 that was applicable only to the 1998–99 crop year and is thus obsolete.

#### **Raisin Weight Conversion Table**

Section 989.601 of the order's regulations specifies a list of conversion factors for raisin weights. The factors are used to convert the net weight of reconditioned raisins acquired by handlers as packed raisins to a natural condition weight. The net weight of the

raisins after the completion of processing is divided by the applicable factor to obtain the natural condition weight. If the adjusted weight exceeds the original weight, the original weight is used. This rule continues to remove the reference to Oleates and its 0.92 conversion factor. Additionally, the table specifies a conversion factor for Naturals of 0.92. Thus, combining Oleates with the Natural varietal type results in no change to the conversion factor. Section 989.601 was revised accordingly.

#### **Outgoing Quality Requirements**

Section 989.59 of the order provides authority for quality control regulations for raisins subsequent to their acquisition by handlers (outgoing requirements). Section 989.702 of the order's regulations specifies minimum grade standards for packed raisins. Prior to implementation of the interim final rule, paragraph (a) of that section specified identical requirements for four varietal types of raisins—Natural, Dipped Seedless, Oleate, and Other-Seedless Sulfured. Since the outgoing requirements for Naturals and Oleates are identical, this rule continues to remove the reference to Oleates from paragraph (a).

Accordingly, Naturals must meet the requirements of U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1622 through 1624). At least 70 percent, by weight, of the raisins in a lot must be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins must at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins must meet the U.S. Grade C tolerances for those factors.

#### **Reporting Requirements**

All raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. These reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC–50); and (6) Inventory of Off-Grade Raisins On Hand (RAC–51). These forms have been revised to remove the columns for

Oleates. The total annual reporting burden on handlers for these six forms remains unchanged at 660 hours.

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), these information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0581–0178.

#### **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 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.

The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This rule continues to combine the Oleate varietal type with the Natural varietal type, and to make conforming changes to the order's volume and quality regulations. Pursuant to § 989.10 of the order, § 989.110 of the regulations was revised to remove the Oleate varietal type, and to include sun-dried raisins that may or may not be treated with Oleate or similar food-grade drying agent in the definition of the Natural varietal type. Pursuant to § 989.66, § 989.166(a)(1) was revised to add identification, delivery, and transfer requirements for Naturals treated with Oleate, or similar drying agents. Finally,

pursuant to §§ 989.58 and 989.59, the order's quality regulations were revised to remove references to Oleates as follows: Incoming quality requirements specified in §§ 989.210, 989.212, 989.213, and 989.701; a table of factors for converting between natural condition and processed weight specified in § 989.601; and outgoing quality requirements specified in § 989.702.

Regarding the impact of this action on affected entities, this rule continues to help ensure that sun-dried Natural Thompson raisins or raisins produced from similar grape varieties will be subject to the same volume regulation percentages. Concerns about circumventing volume regulation by representing Naturals as Oleates will be addressed. If volume regulation were in effect, handlers who have a market for Oleate-treated raisins will have the opportunity to substitute free tonnage non-Oleate treated Naturals for their reserve Oleates to meet their market needs.

The RAC considered several alternatives to this action. In the spring of 2002, the RAC recommended, and USDA approved, conducting a research study to determine if it is possible to distinguish whether Oleate or a similar agent was applied to a grape as opposed to a raisin. This would assist in determining if Oleate or a similar drying agent was being applied to raisins to circumvent volume regulation. Preliminary information indicates that distinguishing if Oleate or similar drying agent were applied to grapes or raisins may not be possible. There were also some discussions on establishing color specifications to differentiate between non-Oleate Naturals, Oleate-treated Naturals, and DOV. However, the general consensus is that raisins darken with time so that color specifications would be very difficult to apply. Further, there were discussions about requiring producers to file a declaration with the RAC prior to the beginning of the crop year regarding the use of Oleate or similar agent. However, such a producer declaration could not be required.

Regarding the impact of this action on reporting requirements under the order, all raisin handlers are required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. As previously listed, these reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC-1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC-3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC-20); (4) Weekly Off-

Grade Summary (RAC-30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC-50); and (6) Inventory of Off-Grade Raisins On Hand (RAC-51). These forms have been revised to remove the columns for Oleates. The current total annual burden on handlers for these six forms remains unchanged at 660 hours.

As previously stated, in accordance with the PRA, the information collection requirements referenced above have been approved by the 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.

Additionally, except for applicable section 8e import regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, Natural raisins must at least meet U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the AMA.

Further, this action was reviewed at several industry meetings as follows—the RAC's Industry Solutions Subcommittee on April 21, 2003, the Administrative Issues Subcommittee on April 23, 2003, work group meetings on April 29 and May 12, 2003, and an Administrative Issues Subcommittee and a RAC meeting on May 15, 2003. All of these meetings 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.

An interim final rule concerning this action was published in the **Federal Register** on July 21, 2003 (68 FR 42943). The RAC staff mailed copies of the rule to all RAC 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 60-day comment period that ended on September 19, 2003. One comment was received in opposition to this action.

The commenter contends that the order cannot be amended to abolish the Oleate varietal type through informal rulemaking. The commenter states that, because § 989.10 was amended through a formal rulemaking proceeding to create Oleates as a distinct varietal type, Oleates can only be abolished by an equivalent formal rulemaking procedure.

USDA disagrees with the commenter's contention. The definition of varietal type has been part of the order since its promulgation in 1949. In 1960, the term was amended through a formal rulemaking proceeding to name additional varietal types of raisins known at that time, and to add authority for the list of varietal types to be changed through informal rulemaking. USDA's recommended decision from the proceeding states that the time may come when a certain type of raisin will no longer be produced in commercial quantities and could be excluded from the list (25 FR 8656; September 8, 1960). Thus, removing a varietal type through informal rulemaking was clearly envisioned when § 989.10 was revised in 1960. Additionally, as the commenter also states, Oleates were added to § 989.110 through informal rulemaking in 1981 (46 FR 39120; July 31, 1981), with a conforming change made to § 989.10 through formal rulemaking in 1983 (48 FR 32977; July 20, 1983).

The commenter also contends that USDA provided no proper basis for implementing this action through an interim final rule. The commenter alleges that USDA has known about the RAC proposal for months and could have published a proposal for comment long ago.

USDA disagrees with the commenter's contention. While there have been discussions at past RAC meetings regarding the concern that Oleate-treated sun-dried Natural raisins could be represented as Oleates to circumvent Natural volume regulation, the RAC did not recommend to USDA any related action until May 15, 2003. USDA relies on marketing order committees/boards to analyze relevant information and submit recommendations to USDA for informal rulemaking to change marketing order regulations. It would have been premature for USDA to proceed with informal rulemaking absent a RAC recommendation and analysis. Additionally, the RAC's recommendation was unanimous, and the action needed to be in place by the beginning of the 2003-04 crop year, which began August 1, 2003. Thus, pursuant to 5 U.S.C. 553, USDA found upon good cause that it was impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this action into effect.

The commenter contends that Oleates should remain a separate varietal type for several reasons. First, the commenter contends that the Oleate varietal type was first created in 1981 through informal rulemaking, and that the rationale for creating the Oleate varietal

type in 1981 is the same as today for maintaining the varietal type (46 FR 39120; July 31, 1981). The commenter also states that changing cultural practices does not justify eliminating the Oleate varietal type today.

As the commenter states, prior to 1981, Oleates were included with the varietal type Dipped and Related Seedless, along with water-dipped and soda-dipped raisins. In 1981, Oleates were considered relatively new to the U.S. industry and were developed to reduce the time required to sun-dry raisins and reduce problems associated with untimely rains. At that time, there was concern that, if Oleate production was substantial, the reserve percentage for Dipped and Related Seedless raisins would be inflated and the water-dipped segment's portion of the free tonnage for that year would be reduced. Thus, in 1981, the RAC recommended, and USDA approved, classifying water-dipped, soda-dipped, and Oleate-dipped raisins on the basis of whether or not they were sun-dried or artificially dried. The rationale for the 1981 change was to provide equity between the sun-dried and artificially dehydrated segments of the raisin industry for purposes of volume regulation.

USDA disagrees with the commenter's contention that the rationale for keeping Oleates as a separate varietal type remains the same today in 2003 as it was in 1981. The raisin industry is dynamic and the marketing order's regulations must often be changed to meet the needs of the industry. Section 989.10 was amended in 1960 to permit changes to the list of varietal types through informal rulemaking so that the RAC could be in a better position to meet changing conditions in the future. USDA has determined that the rationale to combine Oleates with Naturals referenced earlier in this rule—addressing changing cultural practices and reducing a possible means to circumvent volume regulation—justify this action and is consistent with the intent of § 989.10.

The commenter also contends that USDA's inspection service is capable of proper classification and distinction of Oleate raisins versus Naturals. In this discussion, the commenter references the 1981 informal rule that made Oleates a separate varietal type, and states that the rule correctly recognized that the inspection service was fully capable of making the proper classification.

As defined in 1981, Oleates were raisins produced from "grapes" that had been treated with Oleate or similar drying agent. The problem is that cultural practices have changed since

1981, and Oleate is now applied to grapes or raisins at different times in the drying process.

The commenter also contends that this action cannot be based at all on the research study referenced in the interim final rule because the study's results and methodology were not published or otherwise made available to interested parties. USDA disagrees with the commenter's contention. Dr. Susan Rodriguez and Dr. Roy Thornton at California State University, Fresno, California, conducted the study. Dr. Rodriguez attended a RAC work group meeting on April 29, 2003, and presented their preliminary findings. A final report was prepared for the RAC dated June 27, 2003.

The commenter contends that the recent growth in demand for Oleates provides no evidence to extinguish the varietal type. Further, the commenter states that late season deliveries of Oleates provide no evidence of abuse, but rather is a sign of the industry's response to meet demand.

USDA shares the RAC's concerns with the acquisition data. USDA believes that these concerns warrant combining Oleates with the Natural varietal type.

The commenter contends that the change to § 989.166 regarding the identification of Oleate-treated reserve raisins has no merit. USDA disagrees with the commenter's contention. The change is intended to ensure that Oleate-treated reserve raisins are properly marked, and that they cannot be delivered to the RAC or transferred to another handler without the approval of the RAC or the receiving handler. The commenter also contends that the economic viability of Oleates depends on their remaining free from volume regulation. However, as stated in the interim final rule, if volume regulation were in effect, handlers who have a market for Oleate-treated raisins will have the opportunity to substitute free tonnage non-Oleate treated Naturals for their reserve Oleates to meet their market needs.

Accordingly, no changes will be made to the interim final rule as published in the **Federal Register** on July 21, 2003 (68 FR 42943) based on the comment received.

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.

After consideration of all relevant material presented, including the

information and recommendation submitted by the RAC, the comment received, and other available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 989

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

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 42943 on July 21, 2003, is adopted as a final rule without change.

Dated: February 5, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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#### FEDERAL RESERVE SYSTEM

##### 12 CFR Part 229

[Regulation CC; Docket No. R-1183]

#### Availability of Funds and Collection of Checks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Board of Governors is amending appendix A of Regulation CC to delete the reference to the head office of the Federal Reserve Bank of Richmond and reassign the Federal Reserve routing symbols currently listed under that office to the Federal Reserve Bank of Richmond's Baltimore office and delete the reference to the Omaha check processing office of the Federal Reserve Bank of Kansas City and reassign the Federal Reserve routing symbols currently listed under that office to the Des Moines office of the Federal Reserve Bank of Chicago. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

**DATES:** The amendment to Appendix A under the Fifth Federal Reserve District (Federal Reserve Bank of Richmond) is effective on April 17, 2004. The amendments to Appendix A under the Seventh and Tenth Federal Reserve Districts (Federal Reserve Banks of Chicago and Kansas City) are effective on April 24, 2004.