

information and recommendation submitted by the Board and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register**, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 981

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

#### PART 981—ALMONDS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 981, which was published at 69 FR 40534 on July 6, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04–21628 Filed 9–27–04; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 989

[Docket No. FV04–989–3 FIR]

#### Raisins Produced From Grapes Grown in California; Change to Reporting Requirements Regarding Other Seedless Raisins

**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 changing the reporting requirements regarding Other Seedless (OS) raisins 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). The order provides authority for volume and quality regulations and reporting requirements by varietal type of raisin. The OS varietal type includes raisins produced from Flame Seedless (Flames) and other red grapes. This rule requires handlers to report to the RAC information on acquisitions, shipments, inventories, and inter-handler transfers of the different types of OS raisins, including Flames. The RAC will evaluate this data to determine whether segregating Flames into a separate varietal type is warranted.

**DATES:** Effective October 28, 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 marketing agreement and order are 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. 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 in effect revisions to the reporting requirements regarding OS raisins under the order. The order provides authority for volume and quality regulations and reporting requirements by varietal type of raisin. The OS varietal type includes raisins produced from Flames and other red grapes. This rule continues to require handlers to report to the RAC information on acquisitions, shipments, inventories, and inter-handler transfers of the different types of OS raisins, including Flames. The RAC will evaluate this data to determine whether segregating Flames into a separate varietal type is warranted. This action was unanimously recommended by the RAC at a meeting on April 13, 2004.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers. Paragraph (d) of that section provides that, upon request of the RAC, with approval by the Secretary, handlers shall furnish to the RAC other information as may be necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as volume regulation and quality control. The RAC utilizes information collected under the order in its decisionmaking. Section 989.173 of the order’s administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC.

Many of the reports submitted by handlers under the order require information to be segregated by varietal type of raisin. Section 989.10 defines varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient enough to warrant separate identification and classification. Section 989.110 of the order’s administrative rules and regulations contains a list and description of the nine varietal types currently segregated under the order.

One of these varietal types, OS raisins, includes raisins produced from Flames and other similar seedless red grapes. There has been some discussion in recent years regarding whether Flames should be segregated into a separate varietal type. Between the 1995–96 and 2000–01 crop years, volume regulation had not been implemented for OS raisins, and handlers were able to market all of the OS raisins they acquired. During this

period, some handlers had expanded their market for Flames. When volume regulation was in effect for OS raisins for the 2001–02 crop year, some Flame handlers had difficulty meeting their market needs.

Thus, the RAC recommended revising the order’s regulations to require handlers to report data on acquisitions, shipments (dispositions), inventories, and inter-handler transfers of Flames and other OS raisins to the RAC beginning with the 2004–05 crop year, which started on August 1, 2004. The RAC will review this information and determine whether segregating Flames into a separate varietal type is warranted. A separate varietal type would allow the RAC to consider the application of the order’s volume regulation provisions for Flames separate from the other types of OS raisins. Accordingly, paragraphs (a) (inventory), (b) (acquisitions), (c) dispositions, and (d) inter-handler transfers in § 989.173 continue to be revised. Paragraph (g) in § 989.173 regarding similar reports for organic raisins also continues to be revised.

**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 § 989.173 to require handlers to report acquisitions, shipments, inventories, and inter-handler transfers of the different types of raisins within the OS varietal type. This action is needed so that the RAC can collect accurate data on Flames, a particular type of OS raisin, and evaluate this information to determine whether Flames should be segregated into a separate varietal type

under the order. This would permit the RAC to consider application of the order’s volume regulation provisions to Flames separate from the other types of OS raisins. Authority for this action is provided in § 989.73 of the order.

Regarding the impact of this action on affected entities, this action imposes no measurable burden on OS raisin handlers. OS handlers will be required to separate out different types of OS raisins on reports that they are already submitting to the RAC. Most handlers have been doing this voluntarily in recent years. This action has no impact on raisin producers.

The RAC considered alternatives to the recommended action. The RAC formed a work group to review the concerns raised by Flame handlers. One alternative considered was to proceed with informal rulemaking to establish a separate varietal type for Flames. Another alternative considered was to try to have all handlers voluntarily separate Flames from the other OS raisins on certain reports. After much discussion, the work group determined that the best course of action would be to collect data on Flames, evaluate the data, and then determine whether segregating Flames into a separate varietal type was warranted.

This rule continues to slightly modify the reporting requirements on small and large raisin handlers. All raisin handlers are required to submit various reports to the RAC where the data collected are segregated by varietal type of raisin. These reports include:

Form Nos.	Form
RAC-1 .....	Weekly Report of Standard Raisin Acquisitions.
RAC-3 .....	Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing.
RAC-20 .....	Monthly Report of Free Tonnage Raisin Disposition.
RAC-30 .....	Weekly Off-Grade Summary.
RAC-50 .....	Inventory of Free Tonnage Standard Quality Raisins on Hand.
RAC-51 .....	Inventory of Off-Grade Raisins on Hand.
RAC-1 CO .....	Weekly Report of Organic Raisin Acquisitions.
RAC-20 CO .....	Monthly Report of Free Tonnage Organic Raisin Disposition.
RAC-50 CO .....	Inventory of Free Tonnage Standard Quality Organic Raisins on Hand.
RAC-51 CO .....	Inventory of Off-Grade Raisins on Hand.

This rule continues to require that an extra line item be added to these 10 forms so that handlers can separate out Flames from the other types of OS raisins. Handlers will also continue to be required to indicate the type of OS raisin on the Inter-Handler Transfers of Free Tonnage Raisins (RAC-6), the Monthly Free Tonnage Exports by Country of Destination (RAC-21), and the Monthly Free Organic Tonnage Exports by Country of Destination (RAC-21 CO); no change to these forms is needed. The current total annual

burden for all 13 of these forms is 873.48 hours. This rule will not add to this burden on handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements referenced above have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178, Vegetable and Specialty Crops. 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 work group meetings on February 12 and March 4, 2004, the Administrative Issues Subcommittee and RAC meetings on April 13, 2004, and the RAC’s Executive Committee meeting on May 4, 2004, where this action was deliberated were all 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 9, 2004. Copies of the rule were mailed by RAC staff to all RAC members and raisin handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 7, 2004. 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 RAC and other available information, it is hereby found that finalizing the interim rule, without change, as published in the **Federal Register** (69 FR 41385, July 9, 2004) 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 69 FR 41385 on July 9, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-21629 Filed 9-27-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV04-993-2 FR]

#### Dried Prunes Produced in California; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2004-05 and subsequent crop years from \$2.00 to \$4.00 per ton of salable dried prunes. The committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The committee recommended a higher assessment rate because the 2004-05 crop is expected to be very small and a higher assessment rate is needed to generate sufficient funds to meet program expenses. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective September 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, or Terry Vawter, 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, 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. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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. Under the marketing order now

in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2004, and continue until amended, suspended, or terminated. 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 increases the assessment rate established for the committee for the 2004-05 and subsequent crop years from \$2.00 to \$4.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California dried prunes. They are familiar with the committee's needs and with the costs for goods and services in their local area and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

For the 2003-04 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.