

# Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. AO-FV-08-0147; AMS-FV-08-0051; FV08-983-1]

#### Pistachios Grown in California; Hearing on Proposed Amendment of Marketing Order No. 983

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

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 983 (order), which regulates the handling of pistachios grown in California. The amendments are proposed by the Administrative Committee for Pistachios (Committee), which is responsible for local administration of the order. The proposed amendments would: Expand the production area covered under the order to include Arizona and New Mexico in addition to California; authorize the Committee to reimburse handlers for a portion of their inspection and certification costs in certain situations; authorize the Committee to recommend research projects; modify existing order authorities concerning aflatoxin and quality regulations; modify the authority for interhandler transfers of order obligations; redesignate several sections of the order; remove previously suspended order provisions, and make other related changes.

In addition, the Agricultural Marketing Service (AMS) proposes to make any such additional changes as may be necessary to the order to conform to any amendment that may result from the hearing. The proposals are intended to improve the operation and functioning of the marketing order program.

**DATES:** The hearing will be held on July 29, 2008, in Fresno, California,

beginning at 8:30 a.m. and ending at 4:30 p.m. The hearing will continue, if necessary, on July 30, 2008, at 8:30 a.m.

**ADDRESSES:** The hearing location is: Fresno County Farm Bureau, 1247 West Hedges Avenue, Fresno, CA 93728, Telephone: (559) 237-0263.

#### FOR FURTHER INFORMATION CONTACT:

Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; Telephone: (559) 487-5110, Fax: (559) 487-5906, or e-mail: *Martin.Engeler@usda.gov*; or Kathleen M. Finn, 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: *Kathy.Finn@usda.gov*.

Small businesses may request information on this proceeding 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 administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an

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irreconcilable conflict with the proposals.

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. 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 the 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the Committee and submitted to USDA on June 10, 2008. After reviewing the proposals and other information submitted by the Committee, USDA made a determination to schedule this matter for hearing.

The proposed amendments include addition of new sections to the order which would result in numerical redesignation of several sections of the order. The proposed amendments recommended by the Committee are summarized below.

1. Amend the order to expand the production area to include the States of Arizona and New Mexico. The production area covered under the order is currently limited to the State of California. This proposal would revise existing § 983.26, Production area, and redesignate it as § 983.25. It would also result in conforming changes being made to existing § 983.11, Districts; § 983.21, Part and subpart; and existing § 983.32, Establishment and membership. Existing sections 983.21 and 983.32 would also be redesignated as § 983.20 and § 983.41, respectively.

2. Amend the order to authorize the Committee to reimburse handlers for travel and shipping costs related to aflatoxin inspection, under certain

circumstances. This proposal would amend existing § 983.44, Inspection, certification and identification, and redesignate it as § 983.56.

3. Amend the order to add a new § 983.46, Research, that would authorize the Committee to engage in research projects with the approval of USDA. This proposed amendment would also require conforming changes to existing § 983.34, Procedure, to establish voting requirements for Committee recommendations concerning research. It would also require conforming changes to existing § 983.46, Modification or suspension of regulations, and § 983.54, Contributions. The existing § 983.34, § 983.46, and § 983.54 would also be redesignated as § 983.43, § 983.59, and § 983.72, respectively.

4. This proposal would amend the order to provide broad authority for aflatoxin regulations by revising existing § 983.38, Aflatoxin levels, and redesignating it as § 983.50. This proposal would also require conforming changes to existing § 983.40, and redesignating that section as § 983.52. It would also require conforming changes to § 983.1, Accredited laboratory.

5. This proposal would amend the order to provide broad authority for quality regulations by revising existing § 983.39, Minimum quality levels, and redesignating it as § 983.51. It would also remove provisions from that section concerning specific quality regulations that are currently suspended. This amendment would also require conforming changes by removing currently suspended language in § 983.6, Assessed weight; revising § 983.7, Certified pistachios; removing existing § 982.19, Minimum quality requirements and § 983.20, Minimum quality certificate; revising existing § 983.31, Shelled pistachios; revising existing § 983.41, Testing of minimal quantities, and removing currently suspended language in that section; revising existing § 983.42, Commingling; and revising existing § 983.45, Substandard pistachios. Sections 983.31, 983.41, 983.42, and 983.45 would be redesignated as sections 983.30, 983.53, 983.54, and 983.57, respectively.

6. This proposal would also amend the order to add a new § 983.58, Interhandler Transfers. This proposal would modify existing authority under the order by expanding the range of marketing order obligations that may be transferred between handlers when pistachios are transferred between handlers. This proposal would require a conforming change to existing § 983.53,

Assessments, and would redesignate § 983.53 as § 983.71.

7. As a result of the proposed amendments and conforming changes to the order summarized above, numerous administrative changes to the order would also be required. Such changes include numerical redesignations to several sections of the order, changes to cross references of section numbers in regulatory text as a result of the numerical redesignations, and removal of obsolete provisions. In addition, a change would be made to amend existing § 983.70 and redesignate it as § 983.92.

In addition to the proposed amendments to the order, AMS proposes to make any such additional changes as may be necessary to the order to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

#### List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

#### PART 983—PISTACHIOS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Administrative Committee for Pistachios:

#### Proposal Number 1

3. Revise § 983.11 (a) by adding a paragraph (4) following paragraph (3):

##### **§ 983.11 Districts.**

(a) \* \* \*

(4) District 4 consists of the States of Arizona and New Mexico.

\* \* \* \* \*

4. In § 983.20, lift the suspension of December 10, 2007, remove § 983.20, redesignate existing § 983.21 as § 983.20, and revise it to read as follows:

##### **§ 983.20 Part and subpart.**

*Part* means the order regulating the handling of pistachios grown in the States of California, Arizona and New Mexico, and all the rules, regulations and supplementary orders issued thereunder. The aforesaid order regulating the handling of pistachios grown in California, Arizona and New Mexico shall be a subpart of such part.

5. Redesignate § 983.26 as § 983.25 and revise it to read as follows:

##### **§ 983.25 Production area.**

*Production Area* means the States of California, Arizona, and New Mexico.

6. Redesignate § 983.32 as § 983.41, remove the words “eleven (11)” from the introductory paragraph and add in their place the words “twelve (12),” and revise paragraph (b) to read as follows:

##### **§ 983.41 Establishment and membership.**

(a) \* \* \*

(b) *Producers.* Nine members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2, one producer from District 3, and one producer from District 4. The Secretary, upon recommendation of the committee, may reapportion producer representation among the districts to ensure proper representation.

\* \* \* \* \*

#### Proposal Number 2

7. Redesignate § 983.44 as § 983.56 and revise it to read as follows:

### **§ 983.56 Inspection, certification and identification.**

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler. *Provided*, That for handlers making shipments from facilities located in an area where inspection costs for inspector travel and shipment of samples for aflatoxin testing would otherwise exceed the average of those same inspection costs for comparable handling operations located in Districts 1 and 2, such handlers may be compensated by the committee for the difference between their respective inspection costs and such average, or as otherwise recommended by the committee and approved by the Secretary.

#### **Proposal Number 3**

8. Redesignate § 983.34 as § 983.43 and revise paragraph (a) to read as follows:

#### **§ 983.43 Procedure.**

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee. *Provided*, That actions of the committee with respect to the following issues shall require twelve (12) concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

- (1) Quality levels;
- (2) Aflatoxin levels;
- (3) Research under § 983.46; and

*Provided further*, That actions of the committee with respect to the following issues shall require eight (8) concurring votes of the voting members regarding recommendation to the Secretary for adoption or change in:

- (4) Inspection programs;
- (5) The establishment of the committee.

\* \* \* \* \*

9. Redesignate existing § 983.46 as § 983.59, add a new § 983.46, and revise § 983.59 to read as follows:

#### **§ 983.46 Research.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving research designed to assist or improve the efficient production and postharvest handling of quality

pistachios. The committee, with the approval of the Secretary, may also establish or provide for the establishment of projects designed to determine the effects of pistachio consumption on human health and nutrition. Pursuant to § 983.43(a), such research projects may only be established with 12 concurring votes of the voting members of the committee. The expenses of such projects shall be paid from funds collected pursuant to §§ 983.71 and 983.72.

\* \* \* \* \*

### **§ 983.59 Modification or suspension of regulations.**

(a) In the event that the committee, at any time, finds that by reason of changed conditions, any regulations issued pursuant to §§ 983.50 through 983.58 should be modified or suspended, it shall, pursuant to § 983.43, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.50 through 983.58.

10. Redesignate § 983.54 as § 983.72 and revise it to read as follows:

#### **§ 983.72 Contributions.**

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses unless specified in support of research under § 983.46. Furthermore, research contributions shall be free of additional encumbrances by the donor and the committee shall retain complete control of their use.

#### **Proposal Number 4**

11. In § 983.1, remove the words "for testing aflatoxin."

12. In § 983.38, lift the suspension of December 10, 2007, redesignate § 983.38 as § 983.50, and revise it to read as follows:

#### **§ 983.50 Aflatoxin regulations.**

The committee shall establish, with the approval of the Secretary, such

aflatoxin sampling, analysis, and inspection requirements applicable to pistachios to be shipped for domestic human consumption as will contribute to orderly marketing or be in the public interest. No handler shall ship, for human consumption, pistachios that exceed an aflatoxin level established by the committee and approved by the Secretary. All domestic shipments must be covered by an aflatoxin inspection certificate.

13. In § 983.40, lift the suspension of December 10, 2007, redesignate § 983.40 as § 983.52, and revise it to read as follows:

#### **§ 983.52 Failed lots/rework procedure.**

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet aflatoxin or quality requirements. The committee shall designate, with the Secretary's approval, appropriate rework procedures.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the quality requirements to the committee.

#### **Proposal Number 5**

14. In § 983.6, lift the suspension of December 10, 2007, and revise the section to read as follows:

#### **§ 983.6 Assessed weight.**

*Assessed weight* means pounds of inshell pistachios, with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided*, That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; *Provided further*, That the assessed weight may be based upon quality requirements for inshell pistachios that may be recommended by the committee and approved by the Secretary.

15. In § 983.7, lift the suspension of December 10, 2007, and revise the section to read as follows:

#### **§ 983.7 Certified pistachios.**

Certified pistachios are those that meet the inspection and certification requirements under this part.

16. In § 983.19, lift the suspension of December 10, 2007, and remove the section.

17. In § 983.31, remove the suspension of December 10, 2007, redesignate § 983.31 as § 983.30, and revise it to read as follows:

#### **§ 983.30 Substandard pistachios.**

*Substandard pistachios* means pistachios, inshell or shelled, which do not meet regulations established pursuant to §§ 983.50 and 983.51.

18. In § 983.39, lift the suspension of December 10, 2007, redesignate § 983.39 as § 983.51, and revise it to read as follows:

#### **§ 983.51 Quality regulations.**

For any production year, the committee may establish, with the approval of the Secretary, such quality and inspection requirements applicable to pistachios to be shipped for domestic human consumption as will contribute to orderly marketing or be in the public interest. In such production year, no handler shall ship pistachios for domestic human consumption unless they meet the applicable requirements as evidenced by certification acceptable to the committee.

19. In § 983.41, lift the suspension of December 10, 2007, redesignate § 983.41 as § 983.53, and revise it to read as follows:

#### **§ 983.53 Testing of minimal quantities.**

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in § 983.50.

(b) *Quality.* The committee may, with the approval of the Secretary, establish regulations regarding the testing of minimal quantities of pistachios for quality.

20. In § 983.42, lift the suspension of December 10, 2007, redesignate § 983.42 as § 983.54, and revise it to read as follows:

#### **§ 983.54 Commingling.**

Certified lots may be commingled with other certified lots, but the commingling of certified and uncertified lots shall cause the loss of certification for the commingled lots.

21. In § 983.45, lift the suspension of December 10, 2007, redesignate § 983.45 as § 983.57, and revise it to read as follows:

#### **§ 983.57 Substandard pistachios.**

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the aflatoxin and quality requirements established pursuant to §§ 983.50 and 983.51 shall not be shipped for domestic human consumption.

#### **Proposal Number 6**

22. Redesignate § 983.53 as § 983.71 and revise paragraph (a) to read as follows:

#### **§ 983.71 Assessments.**

(a) Each handler who receives pistachios for processing in each production year, except as provided in § 983.58, shall pay the committee on demand, an assessment based on the *pro rata* share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

\* \* \* \* \*

23. Redesignate existing § 983.58 as § 983.80 and add a new § 983.58 as follows:

#### **§ 983.58 Interhandler transfers.**

Within the production area, any handler may transfer pistachios to another handler for additional handling, and any assessments, inspection requirements, aflatoxin testing requirements, and any other marketing order requirements with respect to pistachios so transferred may be assumed by the receiving handler. The committee, with the approval of the Secretary, may establish methods and procedures, including necessary reports, to maintain accurate records for such transfers.

#### **Proposal Number 7—Administrative Changes**

24. § 983.8 is revised to read as follows:

#### **§ 983.8 Committee.**

*Committee* means the Administrative Committee for Pistachios established pursuant to § 983.41.

25. Redesignate § 983.33 as § 983.42 and revise it by removing the word

"grower" and adding in its place the word "producer" in paragraph (a), removing the reference to "§ 983.32" and adding in its place the "§ 983.41" in paragraph (j), and by removing the reference to "§ 983.32, 983.33, and 983.34" and adding in its place "§ 983.41, 983.42, and 983.43" in paragraph (n).

26. Redesignate § 983.56 as § 983.74 and revise it by removing the reference to "§ 983.53" and adding in its place "§ 983.71" in paragraph (a)(1).

27. Redesignate § 983.57 as § 983.75 and revise it to read as follows:

#### **§ 983.75 Implementation and amendments.**

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying §§ 983.64 through 983.74 inclusive.

28. Redesignate § 983.65 as § 983.87 and revise it to read as follows:

#### **§ 983.87 Effective time.**

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.88 or 983.89.

29. Redesignate § 983.70 as 983.92 and revise it to read as follows:

#### **§ 983.92 Exemption.**

Any handler may handle pistachios within the production area free of the requirements in §§ 983.50 through 983.58 and 983.71 if such pistachios are handled in quantities not exceeding 5,000 dried pounds during any production year. This section may be changed as recommended by the committee and approved by the Secretary.

30. Redesignate the following sections as follows:

Old section	New section
983.22	983.21
983.23	983.22
983.24	983.23
983.25	983.24
983.27	983.26
983.28	983.27
983.29	983.28
983.30	983.29
983.35	983.44
983.36	983.45
983.37	983.47
983.43	983.55
983.47	983.64
983.48	983.65
983.49	983.66
983.50	983.67
983.51	983.68
983.52	983.70
983.55	983.73
983.59	983.81
983.60	983.82

Old section	New section
983.61	983.83
983.62	983.84
983.63	983.85
983.64	983.86
983.66	983.88
983.67	983.89
983.68	983.90
983.69	983.91

### Proposal Number 8

Make such changes as may be necessary to the order to conform with any amendment that may result from the hearing.

Dated: July 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08-1445 Filed 7-15-08; 4:25 pm]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS-FV-08-0042; FV08-989-2 PR]

### Raisins Produced From Grapes Grown in California; Use of Estimated Trade Demand To Compute Volume Regulation Percentages

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on using an estimated trade demand figure to compute volume regulation percentages for 2008–09 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule would provide parameters for implementing volume regulation for 2008–09 crop NS raisins, if supplies are short, for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

**DATES:** Comments must be received by August 4, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or e-mail: [Rose.Aguayo@usda.gov](mailto:Rose.Aguayo@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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 proposal is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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.

This proposal invites comments on using an estimated trade demand figure to compute volume regulation percentages for 2008–09 crop NS raisins covered under the order. This rule would provide parameters for implementing volume regulation for 2008–09 crop NS raisins, if supplies are short, for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market. This action was unanimously recommended by the Committee at a meeting on April 3, 2008.

### Volume Regulation Authority

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage), while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation for each crop year, which runs from August 1 through July 31. The Committee must meet by August 15 to review data regarding raisin supplies. At that time, the Committee computes a trade demand for each varietal type of raisins for which a free tonnage percentage might be recommended. Trade demand is equal to 90 percent of the prior year's domestic and export shipments, adjusted by subtracting carryin inventory from the prior year and adding a desirable carryout inventory for the end of the current year.