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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV02-989-1 FIR]

#### Raisins Produced From Grapes Grown in California; Addition of a New Varietal Type and Quality Requirements for Other Seedless-Sulfured 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 that added a new varietal type of raisin 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 imposed by varietal type. This action continues to establish and add to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin being produced by some industry members.

**EFFECTIVE DATE:** Effective October 11, 2002.

**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. It is not intended to have retroactive intent. Under the order provisions now in effect, varietal types and quality requirements may be established for raisins acquired by handlers during the crop year. This rule continues to establish a new varietal type and quality requirements for Other Seedless-Sulfured raisins. 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 add a new varietal type of raisin 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 imposed by varietal type. This action continues to establish and add to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin being produced by some industry members. This action was recommended by the RAC at a meeting in August 2001, and discussed further at RAC meetings in September and November 2001. Changes to the import regulation are being made in a separate rule.

#### Varietal Type for Other Seedless-Sulfured Raisins

The order provides authority for volume and quality regulations that are imposed by varietal type. 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, there were nine different varietal types of raisins listed in this section.

Some industry members have found a new market for raisins made by dehydrating sulfured red seedless grapes. These raisins did not fit into any of the varietal types specified in § 989.110. Such raisins are similar to the Other Seedless varietal type, except they have been sulfured. Such raisins are also similar to the Golden Seedless varietal type, but may not meet the color requirements for Golden Seedless raisins. Golden Seedless raisins are made from green seedless grapes and are mostly yellowish green to greenish

amber in color when sulfured. Red seedless grapes typically vary in color when sulfured.

Thus, the RAC recommended establishing, and adding to the regulations, a new varietal type—Other Seedless-Sulfured raisins. This allows the RAC to consider Other Seedless-Sulfured raisins separate from other varietal types for the purpose of volume and quality regulation, thereby recognizing distinct differences in supply and demand conditions, and raisin characteristics. Accordingly, a new paragraph (j) was added to § 989.110 to define Other Seedless-Sulfured as all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for Seedless raisins which have been artificially dehydrated and sulfured.

#### **Quality Requirements for Other Seedless-Sulfured Raisins**

This rule continues to add quality requirements for Other Seedless-Sulfured raisins. Specifically, this rule continues to add: incoming quality requirements (which includes adding these raisins to the order's weight dockage system); a factor for converting between natural condition and processed weight; and outgoing quality requirements for Other Seedless-Sulfured raisins. 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 two varietal types of raisins—Dipped Seedless and Oleate and Related Seedless raisins. The RAC determined that natural condition Other Seedless-Sulfured raisins are similar to these two varietal types and, therefore, they should have the same incoming quality requirements. Accordingly, paragraph (b) of § 989.701 was revised to include Other Seedless-Sulfured raisins.

#### **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.

Because these raisins are similar to Dipped Seedless and Oleate and Related Seedless raisins, this rule continues to add Other Seedless-Sulfured raisins to the list contained in § 989.210(a), the substandard dockage table specified in § 989.212(b), the list regarding maturity in § 989.213(a), and to the maturity dockage tables in § 989.213(b) and (d). Additionally, this rule continues to remove obsolete language contained in §§ 989.212 and 989.213 that was applicable to only the 1998–99 crop year.

#### **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 add Other Seedless-Sulfured raisins to that list, specifying a conversion factor of 0.95. These raisins are similar to Golden Seedless and Dipped Seedless for which 0.95 conversion factors are specified.

#### **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 requirements for three varietal types—Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins. This rule continues to add Other Seedless-Sulfured raisins to paragraph (a).

Accordingly, Other Seedless-Sulfured raisins 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 (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). This rule continues to require that an additional column be added to these six forms so that handlers can report Other Seedless-Sulfured raisins separately. The total annual burden for these six forms is 660 hours. This action does not change this burden on handlers.

#### **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.

The order provides authority for volume and quality regulations that are imposed by varietal type of raisin. This rule continues to establish and add to the regulations a new varietal type (Other Seedless-Sulfured raisins), along with quality requirements for this varietal type. This is a new type of raisin that is being produced by some industry members. A new paragraph (j) was added to § 989.110 of the order's regulations to define the varietal type Other Seedless-Sulfured raisins. Pursuant to §§ 989.58 and 989.59, quality requirements for Other Seedless-Sulfured raisins were added to the order's regulations as follows: incoming quality requirements were added to §§ 989.210, 989.212, 989.213, and 989.701; a factor for converting between natural condition and processed weight is added to § 989.601; and outgoing quality requirements were added to § 989.702.

Regarding the impact of this action on affected entities, this rule allows the RAC to consider Other Seedless-Sulfured raisins separately from other varietal types of raisins for the purpose of volume and quality regulation, thereby recognizing distinct differences in supply and demand conditions for that product. Producers and handlers may take advantage of a separate and distinct market for Other Seedless-Sulfured raisins. This rule allows appropriate quality requirements to be applied to this new varietal type, which facilitates the production and handling of such raisins. In addition, this rule allows the RAC to examine data on acquisitions and shipments of Other Seedless-Sulfured raisins, as handlers submit various reports to the RAC where the data is segregated by varietal type. The RAC can analyze this data and assess marketing trends and opportunities for this unique varietal type. There are no expected additional costs associated with this regulation on either producers or handlers.

The RAC considered some alternatives to this action. The RAC reviewed the existing varietal types to see whether Other Seedless-Sulfured raisins could fit into an established category. The Golden Seedless and Other Seedless varietal types were

examined. However, Other Seedless-Sulfured raisins may not meet the color requirements for Golden Seedless raisins. In addition, Other Seedless-Sulfured raisins do not fit into the Other Seedless category because that varietal type has historically included raisins that have not been sulfured. The industry determined that it was appropriate to establish a separate varietal type for Other Seedless raisins that had been dehydrated and sulfured.

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). This rule continues to require that an additional column be added to these six forms so that handlers can report Other Seedless-Sulfured raisins separately. The total annual burden for these six forms is 660 hours. This action does not change 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. 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, Other Seedless-Sulfured raisins must 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 Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624).

Further, the RAC's meetings on August 14, September 20, and November 13, 2001, 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.

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.

An interim final rule concerning this action was published in the **Federal Register** on May 28, 2002, (67 FR 36789). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on July 29, 2002. No comments were received.

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 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 67 FR 36789 on May 28, 2002, is adopted as a final rule without change.

Dated: September 4, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 999**

**[Docket No. FV02-999-1 FR]**

#### **Specialty Crops, Import Regulations; Addition of a New Varietal Type to the Raisin Import Regulation**

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

**ACTION:** Final rule.