

- Describe any non-synthetic or synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned substance.

*G. Inclusion of a Non-Organically Produced Agricultural Substance Onto the National List, § 205.606*

- Provide a comparative description on why the non-organic form of the substance is necessary for use in organic handling.
- Provide current and historical industry information/research/evidence that explains how or why the substance cannot be obtained organically in the *appropriate form, appropriate quality, and appropriate quantity* to fulfill an essential function in a system of organic handling.
- Describe industry information on substance non-availability of organic sources including but not limited to the following guidance regarding commercial availability evaluation criteria: (1) Regions of production, including factors such as climate and number of regions; (2) Number of suppliers and amount produced; (3) Current and historical supplies related to weather events such as hurricanes, floods, and droughts that may temporarily halt production or destroy crops or supplies; (4) Trade related issues such as evidence of hoarding, war, trade barriers, or civil unrest that may temporarily restrict supplies, and (5) Other issues which may present a challenge to a consistent supply.

*H. Removal of a Non-Organically Produced Agricultural Substance From the National List, § 205.606*

- Provide a comparative description as to why the non-organic form of the substance is not necessary for use in organic handling.
- Provide current and historical industry information/research/evidence that explains how or why the substance can be obtained organically in the *appropriate form, appropriate quality, and appropriate quantity* to fulfill an essential function in a system of organic handling.
- Provide new industry information on substance availability of organic sources including but not limited to the following guidance commercial availability evaluation criteria: (1) Region of production, including factors such as climate and number of regions; (2) Number of suppliers and amount produced; (3) Current and historical supplies related to weather events such as hurricanes, floods, or droughts that temporarily halt production or destroy crops or supplies; (4) Trade related

issues such as evidence of hoarding, war, trade barriers, and civil unrest that may temporarily restrict supplies and; (5) Any other issues which may present a challenge to a consistent supply.

13. A Confidential Business Information Statement which describes the specific required information contained in the petition that is considered to be Confidential Business Information (CBI) or confidential commercial information and the basis for that determination. Petitioners should limit their submission of confidential information to that needed to address the areas for which this notice requests information. Final determination regarding whether to afford CBI treatment to submitted petitions will be made by USDA pursuant to 7 CFR 1.27(d). Instructions for submitting CBI to the National List Petition process are presented in the instructions below:

(a) Financial or commercial information the petitioner does not want disclosed for competitive reasons may be claimed as CBI. Applicants must submit a written justification to support each claim.

(b) "Trade secrets" (information relating to the production process, such as formulas, processes, quality control tests and data, and research methodology) may be claimed as CBI. This information must be (1) commercially valuable, (2) used in the applicant's business, and (3) maintained in secrecy.

(c) Each page containing CBI material must have "CBI Copy" marked in the upper right corner of the page. In the right margin, mark the CBI information with a bracket and "CBI."

(d) The CBI-deleted copy should be a facsimile of the CBI copy, except for spaces occurring in the text where CBI has been deleted. Be sure that the CBI-deleted copy is paginated the same as the CBI copy (The CBI-deleted copy of the application should be made from the same copy of the application which originally contained CBI). Additional material (transitions, paraphrasing, or generic substitutions, etc.) should not be included in the CBI-deleted copy.

(e) Each page with CBI-deletions should be marked "CBI-deleted" at the upper right corner of the page. In the right margin, mark the place where the CBI material has been deleted with a bracket and "CBI-deleted."

(f) If several pages are CBI-deleted, a single page designating the numbers of deleted pages may be substituted for blank pages. (For example, "pages 7 through 10 have been CBI-deleted.")

(g) All published references that appear in the CBI copy should be

included in the reference list of the CBI-deleted copy. Published information cannot be claimed as confidential.

(h) Final determination regarding whether to afford CBI treatment to submitted petitions will be made by USDA pursuant to 7 CFR 1.27(d). If a determination is made to deny CBI treatment, the petitioner will be afforded an opportunity to withdraw the submission.

No additional collection or recordkeeping requirements are imposed on the public by this rule.

Accordingly, OMB clearance is not required by § 305(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementation regulation at 5 CFR, part 1320.

**Authority:** 7 U.S.C. 6501–6522.

**Dated:** January 10, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–596 Filed 1–17–07; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 980

[Docket No. FV06–980–1 FR]

#### **Vegetables, Import Regulations; Partial Exemption to the Minimum Grade Requirements for Fresh Tomatoes**

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

**ACTION:** Final rule.

**SUMMARY:** This rule provides a partial exemption to the minimum grade requirements under the tomato import regulation. The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act). Section 8e requires imported tomatoes to meet the same or comparable grade and size requirements as those in effect under Federal Marketing Order No. 966 (order). The order regulates the handling of tomatoes grown in Florida. A separate rule to amend the rules and regulations under the order to exempt UglyRipe™ (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued by Department of Agriculture (USDA). This rule provides the same partial exemption under the import regulation so it will conform to the regulations for Florida tomatoes under the order.

**DATES:** *Effective Date:* This final rule becomes effective January 19, 2007.

**FOR FURTHER INFORMATION CONTACT:**

William Pimental or Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793; or e-mail: [william.pimental@usda.gov](mailto:william.pimental@usda.gov) or [christian.nissen@usda.gov](mailto:christian.nissen@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 final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," which provides that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

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

This final 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.

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule provides a partial exemption to the minimum grade requirements for UglyRipe tomatoes imported into the United States. The import requirements for tomatoes specify that tomatoes must meet at least a U.S. No. 2 grade. A final rule to amend the rules and regulations under the order to exempt UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued separately by USDA. This rule provides the same partial exemption under the import regulation so it conforms to the regulations for Florida tomatoes under the order.

The order provides the authority for the establishment of grade requirements for Florida tomatoes. Section 966.323 of the order specifies, in part, the minimum grade requirements for tomatoes grown in Florida. The current minimum grade requirement for Florida tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855-51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade as a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two factors relate specifically to the shape of the tomato. The definitions section of the Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved.

UglyRipe tomatoes are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. UglyRipe tomatoes are often shaped differently from other round tomatoes. Depending on the time of year and the weather, UglyRipe tomatoes are concave on the stem end with deep, ridged shoulders. They can also appear kidney shaped and lopsided. Because of this variance in shape and appearance, UglyRipe tomatoes can have difficulty meeting the shape requirements of the U.S. No. 2 grade.

This rule provides UglyRipe tomatoes with a partial exemption from the grade requirements under the import regulation. UglyRipe tomatoes are only exempt from the shape requirements of the grade and are still required to meet all other aspects of the U.S. No. 2 grade. The UglyRipe tomato also continues to be required to meet all other requirements under the import regulation, such as size and inspection.

Prior to the 1998-99 season, the Florida Tomato Committee (Committee), which locally administers the order, recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. A conforming change was also made to the import regulation. Some Committee members have stated that a large part of the volume of the standard commercial varieties of tomatoes which fail to make the grade are rejected because of their shape and appearance. Consequently, there was some industry concern that providing an exemption for the UglyRipe tomato could result in the

shipment of U.S. No. 3 grade tomatoes of other varieties, contrary to the objectives of the exemption and the order.

To address this concern, the producers of UglyRipe tomatoes pursued entry into USDA's Identity Preservation (IP) program. This program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique product at every stage, from seed, production and processing, to distribution. The UglyRipe tomato was granted positive program status in early 2006.

This partial exemption only extends to UglyRipe tomatoes covered under the IP program. As such, this should help ensure that only UglyRipe tomatoes are shipped under the exemption. In addition, this exemption is contingent upon imported UglyRipe tomatoes continuing to meet the specific requirements related to imports established under the IP program.

This final rule exempts imported UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet order requirements, and will help increase shipments and availability of these tomatoes.

This rule brings the tomato import regulation into conformity with the changes to the domestic order making the import requirements correspond to the domestic requirements under the order by amending 7 CFR 980.212 of the import requirements.

**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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 225 importers of tomatoes subject to the regulation. Small agricultural service firms, which include tomato importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$6,500,000 (13 CFR 121.201). Based on information from the Foreign Agricultural Service, USDA, the dollar value of imported tomatoes ranged from around \$1.05 billion in 2003 to \$1.08 billion in 2005. Using these numbers, the majority of tomato importers may be classified as small entities.

Mexico, Canada, and the Netherlands are the major tomato producing countries exporting tomatoes to the United States. In 2005, shipments of tomatoes imported into the United States totaled 951,787 metric tons. Mexico accounted for 801,408 metric tons, 141,642 metric tons were imported from Canada, and 6,249 metric tons arrived from the Netherlands.

This final rule provides a partial exemption to the minimum grade requirements for UglyRipe tomatoes imported into the United States. The import requirements for tomatoes specify that tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold into the fresh market. A rule which amends the rules and regulations under the order to exempt UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued by USDA. Accordingly, under section 8e of the Act, imports of tomatoes have to meet the same or comparable grade, size, quality, and maturity requirements as the domestic product. This rule provides the same partial exemption for UglyRipe tomatoes under the import regulation so it conforms to the domestic regulation.

This change would represent a small increase in costs for importers of UglyRipe tomatoes, primarily from costs associated with developing and maintaining an IP program. It is anticipated that these costs will be minimal.

In addition, this rule makes additional volumes of UglyRipe tomatoes available for shipment. This should result in increased sales of UglyRipe tomatoes. Consequently, the benefits of this action should more than offset the associated costs.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since a final rule is being initiated that

provides a partial exemption to the minimum grade requirements under the domestic handling regulations, a corresponding change to the import regulations also needs to be accomplished.

This final rule imposes no additional reporting or recordkeeping requirements beyond the IP program on either small or large tomato importers. Reports and forms required under the import regulations for tomatoes are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Additionally, except for applicable domestic regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. Further, the public comment received concerning the proposal did not address the initial regulatory flexibility analysis.

A proposed rule concerning this action was published in the **Federal Register** on June 29, 2006 (71 FR 37016). Copies of the rule were mailed or sent via facsimile to all Committee members and tomato importers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 28, 2006, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter, in opposition of the proposed exemption, stated that this action presents too many opportunities for domestic and import growers to cheat and sell tomatoes of inferior quality.

USDA does not believe this partial exemption will create such an opportunity. There are safeguards in place to help address this issue. In addition to the existing inspection requirements, and compliance efforts, this partial exemption only extends to UglyRipe tomatoes covered under the IP program. This program was developed by AMS and provides independent, third-party verification of the segregation of a company's product at every stage, from seed, production and processing, to distribution. This will help ensure that only UglyRipe tomatoes are shipped using this partial exemption, as only handlers covered under the IP program will be allowed to pack under the exemption. Further,

USDA plans to closely monitor compliance with this exemption.

Accordingly, no changes will be made to the rule as proposed, 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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the regulatory period will begin October 10, 2006. Also, a 60-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 980 is amended as follows:

#### PART 980—VEGETABLES; IMPORT REGULATIONS

■ 1. The authority citation for 7 CFR part 980 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Amend § 980.212, by adding a sentence at the end of paragraph (b)(1) to read as follows:

#### § 980.212 Import regulation; tomatoes.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* *Provided*, That UglyRipe™ tomatoes shall be graded and at least meet the requirements specified for U.S. No. 2 under the U.S. Standards for Grades of Fresh Tomatoes, except they are exempt from the requirements that they be reasonably well formed and not more than slightly rough, and *Provided*, Further that the UglyRipe™ tomatoes meet the requirements of the Identity Preservation program, Fresh Products

Branch, Fruit and Vegetable Programs,  
AMS, USDA.

\* \* \* \* \*

Dated: January 11, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing  
Service.*

[FR Doc. E7-593 Filed 1-17-07; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS-FV-06-0183; FV06-989-  
2 FIR]

#### **Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2005-06 Crop Natural (Sun-Dried) 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 that established final volume regulation percentages for 2005-06 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 locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 82.50 percent free and 17.50 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

**DATES:** *Effective Date:* February 20, 2007. The volume regulation percentages apply to acquisitions of NS raisins from the 2005-06 crop until the reserve raisins from that crop are disposed of under the marketing order.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, or Kurt 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 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. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect the action that established final free and reserve percentages for NS raisins for the 2005-06 crop year, which began August 1, 2005, and ended July 31, 2006. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that established final volume regulation percentages for 2005-06 crop NS raisins covered under the order. The volume regulation percentages are 82.50 percent free and 17.50 percent reserve and were established through an interim final rule published on May 23, 2006 (71 FR 29567). Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various

programs authorized under the order. For example, 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; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages on January 26, 2006, and further justified its recommendation on March 16, 2006.

#### **Computation of Trade Demand**

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2005, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced the 2005-06 trade demand for NS raisins at 232,985 tons as shown below.