

# Proposed Rules

Federal Register

Vol. 66, No. 59

Tuesday, March 27, 2001

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 989

[Docket No. FV01-989-2 PR]

#### Raisins Produced From Grapes Grown in California; Reporting on Organic Raisins

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on adding additional reporting requirements for handlers 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 (RAC). This rule would require handlers to report to the RAC information on acquisitions, shipments, and inventories of organic raisins. This action would provide the RAC with accurate data on organic raisins. The RAC would evaluate this data to determine whether organic raisins should be subject to the order's volume regulation requirements. This rule also announces the Agricultural Marketing Service's intention to request approval of the new information collection requirements by the Office of Management and Budget.

**DATES:** Comments must be received by May 29, 2001.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.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.ams.usda.gov/fv/moab.html>.

**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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, 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 (Department) 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, 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 the Secretary 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 the Secretary 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 the Secretary'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 adding additional reporting requirements for handlers covered under the order. This rule would require handlers to report to the RAC information on acquisitions, shipments, and inventories of organic raisins. This action would provide the RAC with accurate data on organic raisins. The RAC would evaluate this data to determine whether organic raisins should be subject to the order's volume regulation requirements. This action was unanimously recommended by the RAC at a meeting on November 29, 2000.

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 decision-making. Section 989.173 of the order's administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC.

The RAC would like to collect information on organic raisins. Some organic raisin growers have expressed concern to the RAC and the Department with the application of the order's volume regulation provisions to organic raisins. In response, the RAC formed a working-group to review this issue and possible avenues of relief for such organic growers. One option considered by the RAC was to establish separate varietal types for organic raisins covered under the order. This would permit the RAC to consider the application of volume regulation for organic raisins

separate from traditionally grown raisins. However, during this process, it was determined that reliable data on the production, shipment, and marketing of organic raisins does not exist. Thus, the RAC does not have sufficient information at this time to make an informed decision.

Therefore, the RAC recommended requiring handlers to report information to the RAC on organic raisins. Such information would include reports on acquisitions, shipments (dispositions), and inventories of organic raisins. Information regarding transfers between handlers of organic raisins would also be needed to provide the RAC with accurate shipment data. The RAC recommended that this rule become effective on July 31, 2001, the last day of the 2000–01 crop year, so that the RAC could collect year-end inventory information on 2000–01 crop organic raisins. During the following weeks, handlers would begin reporting weekly acquisitions and monthly shipments of 2001–02 crop organic raisins.

Finally, for purposes of this rule, organically produced raisins would mean California raisins that have been certified as organic by an organic certification organization currently registered with the California Department of Food and Agriculture. Section 989.173 of the order's administrative rules and regulation is proposed to be revised accordingly. Paragraph (d) of that section regarding an interhandler transfer report would be revised, and a new paragraph (g) would be added to require handlers of organic raisins to report information regarding inventories, acquisitions, and dispositions of organic raisins. This information would enable the RAC to make an informed decision on whether organic raisins should be subject to the order's volume regulation requirements.

#### Initial 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 initial 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 \$500,000. 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, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities, excluding receipts from other sources.

This rule would revise paragraph (d) in § 989.173 and add a new paragraph (g) to that section to require handlers of organic raisins to submit reports to the RAC regarding acquisitions, shipments, and inventories of such raisins. This action is needed so that the RAC can collect accurate data on organic raisins and evaluate this information to determine whether organic raisins should be categorized as separate varietal types under the order. This would permit the RAC to consider application of the order's volume regulation provisions to organic raisins separate from traditionally grown raisins. Authority for this action is provided in § 989.73 of the order.

Regarding the impact of this action on affected entities, this action would impose some additional burden on handlers who handle organic raisins. Such handlers would be required to submit a weekly acquisition report for organic raisins, a monthly shipment (disposition) report, a monthly report of exports by country of destination, and an annual inventory report. Handlers would also be required to report transfers of organic raisins between handlers; however, those transfers would be captured on the same interhandler transfer report as handlers are currently using.

It is estimated that it would take each handler of organic raisins about 5 minutes to complete each weekly acquisition report (4 hours and 20 minutes annually per handler), 5 minutes to complete each monthly shipment report (1 hour annually per handler), 5 minutes to complete each report of exports by country of destination (1 hour annually per handler), and 5 minutes to complete an annual inventory report (5 minutes annually per handler). If all handlers handle organic raisins, it is estimated

that the total additional annual burden would be 6 hours and 25 minutes for each handler, or a total of 128 hours for the industry. In addition, handlers would be required to provide copies of organic certificates at the request of the Committee. The reporting burden for this activity is accounted for in the new weekly organic acquisition report. The four new reports, the organic inspection certificate requests, and underlying recordkeeping burden for organic acquisitions, shipments, and inventories are being submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581–NEW. At a later time, the new collection would be added to the currently approved collection for use under OMB No. 0581–0178. The burden for the interhandler transfer report (RAC–6) has already been approved by the OMB.

The Department has identified four comparable reports required to be submitted by handlers to the RAC under § 989.173. That section requires handlers to report to the RAC for all California raisins weekly acquisitions, monthly dispositions, monthly exports by country of destination, and annual inventories. This rule proposes that handlers continue to report such information for all California raisins, but that similar information regarding organically produced raisins be captured separately. Although this would be an additional reporting burden on handlers, the RAC has determined that this action is necessary to collect accurate information on organic raisins. In addition, several handlers are represented on the RAC and voted for this action.

Several alternatives were considered by RAC's work-group to address concerns of organic raisin growers. The group considered recommending informal rulemaking to establish separate varietal types for organic raisins. However, as discussed in this proposal, the RAC determined that sufficient data does not exist on production and shipments of organic raisins to warrant such action at this time.

Another option considered was to recommend informal rulemaking under authority provided in § 989.60(c). Under that authority, the RAC may designate such raisins as it deems appropriate for production, processing, and marketing and development projects. For each project, the volume of tonnage that can be acquired by all handlers cannot exceed 500 tons annually. Such raisins can be exempt from certain order regulations such as volume control. The 500-ton limit can be increased through informal rulemaking. The working-

group considered increasing the 500-ton limit and recommending a marketing develop project for all organic Natural (sun-dried) Seedless raisins. Such raisins would be exempt from volume regulation.

Also, there was some discussion about exempting organic raisins from the order's volume control requirements through a formal rulemaking proceeding. However, the working-group and ultimately the RAC decided that, at this time, the most appropriate action would be to collect the necessary production and shipment data on organic raisins. The RAC would evaluate this information and determine whether additional action on organic raisins would be warranted, including establishing separate varietal types for organic raisins.

Further, the RAC's meetings of its organic working-group on August 29 and October 17, 2000, and Administrative Issues Subcommittee and RAC meetings held on November 29, 2000, 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. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

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.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the AMS announces its intention to request a approval of a new information collection for the California raisin marketing order.

*Title:* Raisins Produced from Grapes Grown in California.

*OMB Number:* 0581-NEW.

*Expiration Date of Approval:* To be assigned by OMB.

*Type of Request:* Intent to revise a currently approved information collection.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California raisin

marketing order program, which has been operating since 1949.

On November 29, 2000, the RAC unanimously recommended revising the order's administrative rules and regulations to require handlers to report to the RAC information on organically produced raisins. This information would be reported on four new RAC forms, RAC-1 CO for weekly acquisitions of organic raisins, RAC-20 CO for monthly dispositions of organic raisins, RAC-21 CO for monthly exports of organic raisins by country of destination, and RAC-50 CO for annual inventories of organic raisins. This notice concerns these four reports and the proposed requirement that handlers provide copies of organic certificates at the request of the Committee. The burden regarding the submission of organic certificates is accounted for in the new acquisition report. The information and recordkeeping burdens for the new forms and submission of organic certificates by handlers has been submitted to OMB for approval. Section 989.176 requires handlers to maintain complete, accurate, and current records of all of their business affairs concerning the reports required to be submitted to the Committee. The records must be maintained for at least two years after the termination of the crop year for which the transactions occurred. The collection of information on the interhandler transfer of organic raisins would be captured on the same interhandler transfer report (RAC-6) handlers currently are using for traditionally produced raisins. The burdens associated with the collection of interhandler transfer information have been approved previously by OMB.

The new reports are needed so that the RAC can collect accurate information on organic raisins. The RAC would evaluate this information and determine whether organic raisins should be categorized as a separate varietal type under the order. This would permit the RAC to consider application of the order's volume regulation provisions to organic raisins separate from traditionally grown raisins.

The information collected would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized RAC employees. Authorized RAC employees and the industry would be the primary users of the information and AMS would be the secondary user.

The proposed request for approval of the new information collections under the order are as follows:

#### *RAC-1 CO—Weekly Report of Standard Organic Raisin Acquisitions*

*Estimate of Burden:* Public reporting burden for this collection of information (including the copying of organic certificates) is estimated to average 5 minutes per response.

*Respondents:* California raisin handlers who acquire organically produced California raisins.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 52.

*Estimated Total Annual Burden on Respondents:* 86.7 hours.

#### *RAC-20 CO—Monthly Disposition Report of Free Tonnage Organic Raisin Dispositions*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* California raisin handlers who dispose of organically produced California raisins.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 20 hours.

#### *RAC-21 CO—Monthly Free Organic Tonnage Exports by Country of Destination*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* California raisin handlers who dispose of organically produced California raisins.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 20 hours.

#### *RAC-50 CO—Inventory of Free Tonnage Standard Quality Organic Raisins*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* California raisin handlers who acquire organically produced California raisins.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1.7 hours.

*Comments:* Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the California raisin marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

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

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

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 989.173, paragraph (d)(1)(iii) is revised, paragraphs (g), (h), and (i) are redesignated as paragraphs (h), (i), and (j), and a new paragraph (g) is added to read as follows:

#### § 989.173 Reports.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) The varietal type of raisin, with organically produced raisins as specified in paragraph (g) of this section separated out, net weight, and condition of the raisins transferred; and

\* \* \* \* \*

(g) *Organically produced raisins.* For purposes of this section, organically produced raisins means raisins that have been certified by an organic certification organization currently registered with the California

Department of Food and Agriculture. Handlers of such raisins shall submit the following reports to the Committee.

(1) *Inventory report of organically produced raisins.* Each handler shall submit to the Committee by the close of business on July 31 of each crop year, and not later than the following August 6, on an appropriate form provided by the Committee, a report showing, with respect to the organically produced raisins held by such handler:

(i) The quantity of free tonnage raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

(ii) The quantity of reserve tonnage raisins held for the account of the Committee;

(iii) The quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such.

(2) *Acquisition report of organically produced standard raisins.* Each handler shall submit to the Committee for each week (Sunday through Saturday or such other 7-day period for which the handler has submitted a proposal to and received approval from the Committee) and not later than the following Wednesday, on an appropriate form provided by the Committee, a report showing the following:

(i) The total net weight of the standard raisins acquired during the reporting period, segregated when appropriate, as to free tonnage and reserve tonnage;

(ii) The location of the reserve tonnage; and

(iii) The cumulative totals of such acquisitions (as so segregated) from the beginning of the current crop year.

(iv) Upon request of the Committee, each handler shall provide copies of the organic certificate(s) applicable to the quantity of raisins reported as acquired.

(3) *Disposition report of organically produced raisins.* No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of free tonnage packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

(i) Domestic outlets (exclusive of Federal government purchases) according to the quantity shipped in consumer cartons, the quantity of bags having a net weight content of 4 pounds or less, and the quantity shipped in bulk

packs (including, but not limited to those in bags having a net weight content of more than 4 pounds);

(ii) Federal government purchases;

(iii) Export outlets according to quantity shipped in consumer cartons, the quantity shipped in bags having a net weight of 4 pounds or less, and the quantity shipped in bulk packs (including, but not limited to, those in bags having a net weight content of more than 4 pounds);

(iv) Export outlets, by countries of destination; and

(v) Each of any other outlets in which the handler disposed of such raisins other than by any transfer which is excluded by the preceding sentence.

\* \* \* \* \*

Dated: March 21, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–7528 Filed 3–26–01; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF THE TREASURY

##### Office of the Comptroller of the Currency

#### 12 CFR Part 41

[Docket No. 01–04]

RIN 1557–AB78

#### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 222

[Regulation V; Docket No. R–1082]

#### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 334

RIN 3064–AC35

#### DEPARTMENT OF THE TREASURY

##### Office of Thrift Supervision

#### 12 CFR Part 571

[Docket No. 2001–17]

RIN 1550–AB33

#### Fair Credit Reporting Regulations on Communication of Consumer Information Among Affiliated Institutions

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).