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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV03-989-3 FIR]

#### Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2003 Diversion Program

**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 reducing the production cap for the 2003 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified 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).

**EFFECTIVE DATE:** June 11, 2003.

**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. 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 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 final rule reduces the production cap for the 2003 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP.

Reducing the cap for the 2003 RDP is expected to bring the figure in line with anticipated 2003 crop yields. This action was recommended by the RAC at a meeting on January 29, 2003.

#### Volume Regulation Provisions

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 RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be 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 ultimately distributed to producers.

#### Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate from the RAC that represents the quantity of raisins diverted. Producers

sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

### Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 ton per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

### RAC Recommendation

The RAC met on January 29, 2003, and recommended allocating 35,000 tons of 2002 NS reserve raisins to a 2003 RDP. The program will be limited to vine removal for complete production units, with a 5-year moratorium on replanting raisin-variety grapes. Damages of \$700 per ton of creditable fruit weight represented on the RDP certificate will be imposed on producers who replant prior to July 31, 2008. Harvest costs were established at \$340

per ton. The RAC also recommended reducing the production cap from 2.75 to 2.0 tons per acre. With this year's large crop of about 373,000 tons, the RAC believes that the grape vines will produce a smaller crop next year. Thus, the RAC recommended reducing the cap from 2.75 to 2.0 tons per acre to reflect anticipated 2003 crop yields.

The RAC's RDP recommendation passed with 24 members in favor and 21 opposed. Those opposed expressed concern with the RDP as a whole, not the production cap. They believe that many producers have already pulled out their vines, and that attrition should occur naturally in the industry. Concern also was expressed that the tonnage allocated to the diversion program would be added to next year's crop estimate, thereby reducing next year's free tonnage percentage and producer returns. Those in favor of the program contend that, with a 2002 NS crop estimated at about 373,000 tons (deliveries through the week ending March 29, 2003, are at 387,780 tons), and a computed trade demand (comparable to market needs) of 196,185 tons, there would be 176,815 tons of reserve raisins. A diversion program is one avenue authorized under the order to utilize these reserve raisins.

On February 7, 2003, USDA approved the requirements of the RDP recommended by the RAC, with the exception of the production cap, which required informal rulemaking. This rule continues in effect an interim final rule implementing the RAC's recommendation to reduce the 2003 RDP production cap from 2.75 to 2.0 tons per acre. Paragraph (t) in § 989.156 of the order's rules and regulations was revised accordingly.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and

approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise § 989.156(t) of the order's rules and regulations regarding the RDP. Authority for this action is provided in § 989.56(a) of the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP.

This rule continues to reduce the cap from 2.75 to 2.0 tons per acre to reflect next year's estimated yield. Regarding the impact of this action on affected entities, producers who participate in the 2003 RDP will nonetheless have the opportunity to earn income for not harvesting a 2003–04 crop. Producers who sell the certificates to handlers next fall will be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2003 RDP were established by the RAC at \$340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the \$340 per ton harvest cost. Handlers will redeem the certificates for 2002–03 crop NS reserve raisins and pay the RAC the \$340 per ton harvest cost plus payment for receiving, storing, fumigating, handling (currently totaling \$46 per ton), and inspecting (currently \$9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2003 RDP.

Alternatives to the recommended action included leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons

per acre will more accurately reflect anticipated 2003 crop yields.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the application) has 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on January 29, 2003, and the RAC's Administrative Issues Subcommittee meeting on January 24, 2003, when this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on March 19, 2003 (68 FR 13219). Copies of the rule were mailed by RAC staff to all RAC 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 15-day comment period that ended on April 3, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 13219, March 19, 2003) 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 68 FR 13219 on March 19, 2003, is adopted as a final rule without change.

Dated: May 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-11704 Filed 5-9-03; 8:45 am]

BILLING CODE 3410-02-P

### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Parts 40 and 150

RIN 3150-AH10

#### Source Material Reporting Under International Agreements; Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 1, 2003, for the direct final rule that appeared in the **Federal Register** of March 5, 2003 (68 FR 10362). This direct final rule amended the NRC's regulations on reporting source material with foreign obligations. This document confirms the effective date.

**DATES:** The effective date of October 1, 2003, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O-1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (<http://ruleforum.llnl.gov>). For information about the interactive rulemaking Web-site, contact Ms. Carol Gallagher (301) 415-5905; e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415-8126; (e-mail: [mlh1@nrc.gov](mailto:mlh1@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** On March 5, 2003 (68 FR 10362), the NRC published in the **Federal Register** a direct final rule amending its

regulations in 10 CFR parts 40 and 150 to require licensees to report their holdings of source material with foreign obligations to the agency. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 6th day of May, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03-11699 Filed 5-9-03; 8:45 am]

BILLING CODE 7590-01-P

### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 241

[Release No. 34-47806]

#### Electronic Storage of Broker-Dealer Records

**AGENCY:** The Securities and Exchange Commission.

**ACTION:** Interpretation.

**SUMMARY:** The Securities and Exchange Commission is publishing its views on the operation of its rule permitting broker-dealers to store required records in electronic form. Under the rule, electronic records must be preserved exclusively in a non-rewriteable and non-erasable format. This interpretation clarifies that broker-dealers may employ a storage system that prevents alteration or erasure of the records for their required retention period.

**EFFECTIVE DATE:** May 12, 2003.

**FOR FURTHER INFORMATION:** Michael A. Macchiaroli, Associate Director, 202/942-0131; Thomas K. McGowan, Assistant Director, 202/942-4886; or Randall W. Roy, Special Counsel, 202/942-0798, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") is publishing guidance with respect to paragraph (f)(2)(ii)(A) of Rule 17a-4, which requires broker-dealers maintaining records electronically to use a digital storage medium or system that "[p]reserve[s]