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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. 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 to reduce the additional holding and storage payments regarding 2002 NS reserve raisins that were carried into the 2003 crop year and used as cattle feed. The crop year runs from August 1 through July 31. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes

additional payments for reserve raisins held beyond the crop year of acquisition. The RAC met on July 2, 2003, and unanimously recommended that additional payments for reserve raisins used as cattle feed accrue beginning September 13, 2003, rather than August 1, 2003. This action continues to reduce expenses incurred by the 2002 reserve pool and thereby helps improve returns to 2002 equity holders, primarily raisin producers.

#### 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 the reserve pool's equity holders, primarily producers.

#### Costs Regarding Holding and Storage of Reserve Raisins

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the RAC, in accordance with a schedule of payments established by the RAC and approved by the Secretary. Further, the RAC must pay rent to producers or handlers for boxes used in storing reserve raisins held beyond the crop year of acquisition. As previously mentioned, the crop year runs from August 1 through July 31.

Section 989.401(b) of the order's rules and regulations specifies additional payments to handlers for storing, handling, and fumigating reserve raisins held beyond the crop year of acquisition. Specifically, handlers must be compensated for such raisins at a rate of \$2.30 per ton for the first 3 months (August through October), and at a rate of \$1.18 per ton per month for the

remaining 9 months (November through July).

Section 989.401(c) specifies further payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition. Specifically, persons who furnish boxes or bins used for storing reserve raisins held for the account of the RAC on August 1 are compensated for the use of such containers as follows: For boxes, 2½ cents per day, not to exceed a total payment of \$1.00 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins, 20 cents per day per bin, not to exceed a total of \$10.00 per bin per year.

#### Disposal Program

Pursuant to § 989.67(b) of the order, the RAC implemented a program to dispose of about 38,000 tons of 2002 NS reserve raisins for use as cattle feed. The tonnage was stored at handler facilities and was adulterated to ensure that the raisins remain in non-commercial channels. The program helped the industry reduce its burdensome oversupply of raisins. It also helped to make available bins for storing raisins during the new crop year, which began August 1, 2003. Nearly all of the reserve tonnage that was used as cattle feed was removed from handler premises by mid-September 2003 (about 425 tons remained).

#### RAC Recommendation

The RAC met on July 2, 2003, and unanimously recommended reducing the additional holding and storage payments regarding 2002 NS reserve raisins held by handlers on August 1, 2003, and used as cattle feed. Specifically, additional payments for such raisins were accrued beginning September 13, 2003, rather than August 1, 2003. Thus, additional costs were only incurred for such tonnage that remained at handler premises after September 12, 2003 (425 tons). Payments for storing and holding reserve raisins are deducted from reserve pool proceeds, and net proceeds are ultimately distributed to equity holders. Thus, reducing the expenses for 2002 NS reserve tonnage used as cattle feed will help improve returns to 2002 equity holders.

#### 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.