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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AO-FV-16-0016; AMS-SC-16-0011; SC16-989-1]

Raisins Produced from Grapes Grown in California; Hearing on Proposed Amendment of Marketing Order No.989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 989 (order) that regulates the handling of raisins grown in California. Five amendments are proposed by the Raisin Administrative Committee (Committee), which is responsible for local administration of the order. These proposed amendments would: authorize production research; establish new nomination procedures for independent grower member and alternate member seats; add authority to regulate quality; add authority to establish different regulations for different markets; and add a continuance referenda requirement.

In addition, the Agricultural Marketing Service (AMS) proposes two amendments. These amendments would remove order language pertaining to volume regulation and reserve pool authority and would establish term limits for

Committee members. In addition, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. These proposed amendments are intended to update the order to reflect past changes in the industry and potential future changes, and to improve the operation and administration of the order.

DATES: The hearing dates are May 3 and 4, 2016, 9:00 a.m. to 5:00 p.m.; and continuing on May 5, 2016, at 9:00 a.m., if necessary, in Clovis, California.

ADDRESSES: The hearing will be held at the Hilton Garden Inn Clovis, 520 W Shaw Ave, Clovis, CA 93612.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Michelle Sharrow, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Melissa.Schmaedick@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order

and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

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. 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 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the Committee on January 27, 2016, and submitted to USDA on February 2, 2016. After reviewing the proposals and other information submitted by the Committee, USDA made a determination to schedule this matter for hearing.

The proposed amendments to the order recommended by the Committee are summarized as follows:

1. Amend § 989.53 to authorize production research.

2. Amend §§ 989.29 and 989.129 to authorize separate nominations for independent grower member and independent grower alternate member seats.

3. Amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality. A corresponding change would also revise the heading prior to § 989.58 to include quality.

4. Amend § 989.59 to add authority to establish different regulations for different markets.

5. Amend § 989.91 to require continuance referenda.

6. Amend the order to remove volume regulation and reserve pool authority. This would include: Removing §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173 and 989.210; and, redesignating § 989.70 as § 989.96. Corresponding changes would also remove the following headings: "Volume Regulation" prior to §§ 989.65; "Volume Regulation" prior to § 989.166; and, "Subpart-Schedule of Payments" prior to § 989.401.

7. Amend § 989.28 to establish term limits.

The Committee works with USDA in administering the order. These proposals submitted by the Committee have not received the approval of USDA. The Committee believes that

its proposed amendments would update the order to address changes that have occurred in the industry and potential changes that could occur in the future. The amendments are intended to improve the operation and administration of the order.

In addition to the proposed amendments to the order, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing or to correct minor inconsistencies and typographical errors.

The public hearing is held for the purpose of: (i) receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of

prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

PART 989 - RAISINS PRODUCED BY GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601-674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Raisin Administrative Committee:

Proposal Number 1

3. In § 989.53(a), revise the introductory text to read as follows:

§ 989.53 Research and development.

(a) General. The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, market research and development, marketing promotion including paid advertising, designed to assist, improve, or promote the production, marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

Proposal Number 2

4. In § 989.29:

- a. Revise paragraph (b) (2) (ii);
- b. Redesignate paragraph (b) (2) (iii) as paragraph (b) (2) (iv);
- c. Add a new paragraph (b) (2) (iii); and
- d. Revise newly redesignated paragraph (b) (2) (iv).

The revisions and addition read as follows:

§ 989.29 Initial members and nomination of successor members.

(b) ***

(2) ***

(i) ***

(ii) Each such producer whose name is offered in nomination for producer member positions to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to serve if selected. Similarly, each such producer whose name is offered in nomination for producer alternate member positions to represent on the committee independent producers or producers who are affiliated with cooperative marketing

association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer member candidate receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee until nominees for all producer member positions have been filled. Similarly, the producer alternate member candidate receiving the highest number of votes shall be designated as the first alternate member nominee, the second highest shall be designated as the second alternate member nominee until nominees for all member positions have been filled.

(iii) In the event that there are more producer member nominees than positions to be filled and not enough producer alternate member nominees to fill all positions, producer member nominees not nominated for a member seat may be nominated to fill vacant alternate member seats.

Member seat nominees shall indicate, prior to the nomination vote, whether they are willing to accept nomination for an alternate seat in the event they are not nominated for a member seat and there are vacant alternate member seats. Member seat nominees that do not indicate willingness to be considered for vacant alternate member seats shall not be considered.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b) (2) (ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

5. Section 989.129 is revised to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other

business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b) (2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two

persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled in its district.

Proposal Number 3

6. In § 989.58:

- a. Revise the heading prior to this section, and
- b. Revise paragraphs (a), (b), (d)(1) and (e)(1).

The revisions read as follows:

Grade, Quality, and Condition Standards

§ 989.58 Natural condition raisins.

(a) Regulation. No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade, quality, and condition standards as the committee may establish, with the approval of the Secretary, in applicable rules and regulations: Provided, That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: And provided further, That a handler may acquire natural

condition raisins which exceed the tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade, quality, and condition standards are not applicable or then in effect pursuant to this part.

(b) Changes in minimum grade, quality, and condition standards for natural condition raisins. The committee may recommend to the Secretary changes in the minimum grade, quality, and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, and condition standards for any varietal type be added to or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(d) ***

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of offgrade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of free tonnage raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition in eligible nonnormal outlets. The handler

shall be reimbursed by the committee for inspection costs incurred by him and applicable to pool tonnage held for the account of the committee. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards: Provided, That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

(e) ***

(1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade, quality, and condition standards may:

(i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets;

(ii) Be returned unstemmed to the person tendering the raisins; or

(iii) Be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e) (2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

7. In § 989.59, revise paragraphs (a), (b), (d), (e), and (g) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) Regulation. Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade, quality, and condition standards established by the committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: Provided, That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. And provided further, That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste.

(b) The committee may recommend changes in the minimum grade, quality, or condition standards for packed raisins

of any varietal type and may recommend to the Secretary that minimum grade, quality, or condition standards for any varietal type be added or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(d) Inspection and certification. Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause and inspection to be made of such raisins to determine whether they meet the then applicable minimum grade, quality, and condition standards for natural condition raisins or the then applicable minimum standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall

be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) Inter-plant and inter-handler transfers. Any handler may transfer from his plant to his own or another handler's plant within the State of California free tonnage any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(g) Exemption of experimental and specialty packs. The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption

of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade, quality, or condition standards of this section, together with the inspection and certification requirements if applicable.

8. Section 989.61 is revised to read as follows:

§ 989.61 Above parity situations.

The provisions of this part relating to minimum grade, quality, and condition standards and inspection requirements, within the meaning of section 2(3) of the Act, and any other provisions pertaining to the administration and enforcement of the order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the act.

Proposal Number 4

9. Section 989.59 is further amended by revising paragraph (a) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) Regulation. Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the

effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade, quality, and condition standards established by the committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: Provided, That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. And provided further, That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. The Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

Proposal Number 5

10. In § 989.91:

a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and;

b. Add a new paragraph (c).

The addition to read as follows:

§ 989.91 Suspension or termination.

(c) No less than two crop years and no later than six crop years after the effective date of this amendment, the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers.

Subsequent referenda to ascertain continuance shall be conducted every six crop years thereafter. The Secretary may terminate the provisions of this part at the end of any crop year in which the Secretary has found that continuance of this part is not favored by a two-thirds majority of voting producers, or a two-thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California. Such termination shall be announced on or before the end of the crop year.

Proposals submitted by USDA:

Proposal Number 6

11. Remove §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156,

989.166, 989.167, 989.221, 989.257 and 989.401. Remove the headings "Volume Regulation" prior to §§ 989.65, "Volume Regulation" prior to § 989.166, and "Subpart—Schedule of Payments" prior to § 989.401.

12. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

Producer means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

13. In § 989.53(a), remove the text that follows paragraph (a)(5).

14. In § 989.54:

- a. Remove paragraphs (a) through (d) and (g);
- b. Remove paragraph (e)(4);
- c. Redesignate paragraphs (e)(5) through (e)(10) as (e)(4) through (e)(9), respectively;
- d. Redesignate paragraphs (e), (f), and (h) as paragraphs (a), (b), and (c), respectively; and
- e. Revise newly redesignated paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5) and (c).

The revisions read as follows:

§ 989.54 Marketing policy.

(a) Each crop year, the Committee shall prepare and submit to the Secretary a report setting forth its

recommended marketing policy, including quality regulations for the pending crop. In developing the marketing policy, the Committee may give consideration to the production, harvesting, processing, and storage conditions of that crop, as well as the following factors:

(1) The estimated tonnage held by producers and handlers at the beginning of the crop year;

(4) An estimated desirable carryout at the end of the crop year;

(5) The estimated market demand for raisins, considering the estimated world raisin supply and demand situation;

(c) Publicity. The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained

in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation.

15. In § 989.58, further revise paragraphs (d)(1), and (e)(4) to read as follows:

§ 989.58 Natural condition raisins.

(d) ***

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of offgrade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of natural condition raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d) (2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d) (3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition in eligible nonnormal outlets. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards:

Provided, That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a

copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

(e) ***

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned.

16. In § 989.59, further revise paragraph (e) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(e) Inter-plant and inter-handler transfers. Any handler may transfer from his plant to his own or another handler's plant within the State of California any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

17. Section 989.60(a) is revised to read as follows:

§ 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade raisins, free from any or all regulations, for uses in non-normal outlets.

18. Redesignate § 989.70 as § 989.96.

19. Section 989.73 (b) is revised to read as follows:

§ 989.73 Reports.

(b) Acquisition reports. Each handler shall submit to the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to:

(1) The total quantity of standard raisins acquired;

(2) The total quantity of off-grade raisins acquired pursuant to § 989.58(e) (1) (i); and

(3) Cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

20. Section 989.79 is revised to read as follows:

§ 989.79 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the committee not more than 5 days if warranted by a late crop.

21. In § 989.80, revise paragraphs (a) through (c) to read as follows:

§ 989.80 Assessments.

(a) Each handler shall pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such

expenses shall be equal to the ratio between the total raisin tonnage acquired by such handler during the applicable crop year and the total raisin tonnage acquired by all handlers during the same crop year.

(b) Each handler who reconditions off-grade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total raisin tonnage acquired by all handlers.

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry

out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

22. Section 989.84 is revised to read as follows:

§ 989.84 Disposition limitation.

No handler shall dispose of standard raisins, off-grade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

23. Section 989.158(c) (4) (i) is revised to read as follows:

§ 989.158 Natural condition raisins.

(c) ***

(4) ***

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including e-mail. Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins.

The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

24. In § 989.173:

- a. Remove paragraphs (b) (2) (ii), (f) and (g) (1) (ii);
- b. Redesignate paragraphs (b) (2) (iii), (g) and (g) (1) (iii) as paragraphs (b) (2) (ii), and (f) (1) (ii), respectively; and
- c. Revise paragraphs (a), (b) (2) (i), newly redesignated paragraph (b) (2) (ii), (c) (1), (d) (1), (d) (1) (v), and newly redesignated paragraph (f).

The revisions read as follows:

§ 989.173 Reports.

(a) Inventory reports. Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by such handler, the quantity of off-grade raisins segregated as to those for

reconditioning and those for disposition as such. Provided, That, for the Other Seedless varietal type, handlers shall report the information required in this paragraph separately for the different types of Other Seedless raisins. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be necessary and which the Committee shall specify in its request.

(b) ***

(2) ***

(i) The total net weight of the standard raisins acquired during the reporting period; and

(ii) The cumulative totals of such acquisitions from the beginning of the then current crop year.

(c) ***

(1) Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfers within

the State of California between plants of any such handler and from such handler to other handlers): Provided, That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins. Such required information shall be segregated as to:

(d) ***

(1) Any handler who transfers raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, and assessments.

(f) ***

(1) ***

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

(ii) ***

(2) ***

(i) The total net weight of the standard raisins acquired during the reporting period; and

(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 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:

25. In § 989.210:

- a. Remove paragraphs (b), (c) and (e);
- b. Redesignate paragraph (d) as (b), paragraph (f) as (c), and paragraph (g) as (d); and
- c. Revise newly redesignated paragraph (b).

The revisions read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(b) Assessments. Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the creditable weight of such lot.

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26. In § 989.28:

- a. Redesignate the introductory text as paragraph (a);
- b. Revise newly redesignated paragraph (a); and
- c. Add paragraph (b).

The revisions and addition read as follows:

§ 989.28 Term of office.

(a) The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years; Provided, That each such member and alternate member shall continue to serve until their successor is selected and has qualified.

(b) Representatives may serve up to four consecutive, two-year terms of office. In no event shall any representative serve more than eight consecutive years on the Committee. For purposes of determining when a

representative has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. This limitation on tenure shall not include service on the Committee prior to implementation of this amendment.

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Make other such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: April 14, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
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