



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 989 and 999

[Doc. No. AMS-SC-16-0065; SC16-989-2 PR]

Raisins Produced from Grapes Grown in California and Imported Raisins; Removal of Language

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation by the Raisin Administrative Committee (Committee) to remove the term "midget" from the minimum grade standards of the California raisin marketing order (order). The marketing order regulates the handling of raisins produced from grapes grown in California, and is administered locally by the Committee. Recently, the U.S. Standards for Grades of Processed Raisins (standards) were amended to remove the word "midget." The proposed change would make the marketing order consistent with the amended standards. Furthermore, this rule would make a corresponding change to the raisin import regulation as required by the Agricultural Marketing Agreement Act of 1937, as amended, when changes are made to the size, grade, maturity, or quality requirements of the order.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.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 on the internet at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Maria Stobbe, Marketing Specialist, or Jeffery Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Maria.Stobbe@ams.usda.gov or Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, 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: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Marketing Order No. 989, both as amended (7 CFR part 989), 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."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including raisins, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically-produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is 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. 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.

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

This proposal invites comments on the removal of the term "midget" from § 989.702(a) of the order and § 999.300(b)(1) of the import regulations. This action would

make the order and the import regulations consistent with the recent change to the standards.

The Committee unanimously recommended that the term "midget" be removed from the order at a meeting on June 26, 2014. At a subsequent meeting on August 14, 2014, the committee also unanimously recommended that the word "midget" be removed from the standards. As required under the Act, the import regulations must be consistent with the changes to the order. In this instance, the order must be consistent with changes to the standards.

Paragraph (a) of § 989.702 of the order specifies minimum grade standards for packed Natural (sun-dried) Seedless (NS) raisins, requiring that small (midget)-sized raisins shall meet U. S. Grade C tolerances with respect to pieces of stem, and underdeveloped and substandard raisins.

The word "midget" is redundant to the term "small," and its removal is insignificant.

Pursuant to the recommendation of the Committee and consistent with the recent amendment of the standards, the word "midget" is proposed to be removed from the order language.

The Committee's recommendation to delete the word "midget" from the order and the standards necessitates a corresponding change to the import requirements.

Under the raisin import regulations, in paragraph (b) (1) of § 999.300, raisins imported into the United States are required to meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically-produced commodities, when such commodities are regulated under an order. With the removal of the word "midget" from both the standards and the order, removal of "midget" is required under the import regulations.

Removal of the word "midget" should not impact the application of the order or the import regulations, since the word "midget" is redundant and appears in parentheses after the word "small." Thus, removing the word "midget" has no effect on interpretation of the order or the import regulations; and, therefore, has no effect on raisin importers.

The final rule removing the word "midget" from the standards was published in the **Federal Register** on June 23, 2016 (81 FR 40779). Thus, this proposal would make the order and the import regulations consistent with the standards, as recently revised.

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 businesses 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.

There are approximately 3,000 California raisin producers and 24 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts less than \$750,000, and defines small agricultural service firms, such as handlers and importers, as those whose annual receipts are less than \$7,500,000. (13 CFR 121.201.)

Based on shipment data and other information provided by the Committee, most producers and approximately 13 handlers of California raisins may be classified as small entities. This action should not have any impact on handlers' or growers' benefits or costs.

There are approximately 52 raisins importers. This action should not have any impact on importers' costs.

This proposal would remove the word "midget" from the order regulations in § 989.702(a) and from the import regulations in § 999.300(b)(1), bringing the order and the import regulations into conformance with the recent amendment to the standards.

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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, "Vegetable and Specialty Crops." No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either large or small raisin handlers or on raisin importers. 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. In

addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposal.

Further, the Committee's meetings were widely publicized throughout the California raisin industry and all interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 26, 2014, and August 14, 2014, meetings were public meetings and all entities, both large and small, were encouraged to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts 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: www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because: (1) this proposed rule should be implemented as soon as possible since the standards have

already been amended; (2) the Committee discussed this change at two public meetings, and unanimously recommended it; and (3) the proposed change is insignificant and should not impact handlers or importers. All written comments received during the comment period will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 989

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

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 989 and 999 are 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.

§ 989.702 Minimum grade standards for packed raisins.

2. Paragraph (a) of § 989.702 is amended by removing the word "midget."

PART 999 - SPECIALTY CROPS; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 999 continues to read as follows:

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

4. Paragraph (b) (1) of § 999.300 is amended by removing the word "midget."

Dated: September 12, 2016

Elanor Starmer
Administrator
Agricultural Marketing Service
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