



**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; Order Amending Marketing Order No. 989**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 989 (Order), which regulates the handling of raisins produced from grapes grown in California. Five amendments were proposed by the Raisin Administrative Committee (RAC) and three were proposed by the Agricultural Marketing Service (AMS). Seven of the eight proposed amendments were favored by California raisin growers in a mail referendum, held December 4 through 15, 2017. This final rule also makes administrative revisions to subpart headings to bring the language into conformance with the Office of Federal Register requirements.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237.

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Small businesses may request information on this  
proceeding by contacting Richard Lower, Marketing Order and  
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**SUPPLEMENTARY INFORMATION:** Prior documents in this  
proceeding: Notice of Hearing issued on April 14, 2016, and  
published in the April 22, 2016, issue of the *Federal  
Register* (81 FR 23650) and a Recommended Decision issued on  
May 3, 2017, and published in the May 31, 2017, issue of  
the *Federal Register* (82 FR 24882); and a Secretary's  
Decision and Referendum Order issued September 19, 2017,

and published in the September 29, 2017, issue of the *Federal Register* (82 FR 45517).

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 Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget's (OMB) Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

**Preliminary Statement**

This action, pursuant to 5 U.S.C. 556 and 557, finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. Part 989 (referred to as 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 rule is formulated on the record of a public hearing held on May 3 and 4, 2016, in Clovis, California. The hearing was held pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the *Federal Register* on April 22, 2016 (81 FR 23650). The notice of hearing contained five proposals submitted by the RAC and three proposals by AMS.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on May 3, 2017, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 30, 2017. One exception was filed. The exception filed opposed the proposed amendment to establish term limits.

A Secretary's Decision and Referendum Order was issued on September 29, 2017, directing that a referendum be conducted during the period of December 4 through 17, 2017, among eligible California raisin growers to determine

whether they favored the proposed amendments to the Order. To become effective, the amendments had to be approved by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of raisins represented by voters voting in the referendum. The approved amendments were favored by over ninety percent of the growers voting in the referendum, representing over ninety percent of the total volume of raisins produced by those voting. The failed amendment was opposed by ninety-three percent of those voting and ninety-five percent of the represented volume.

The amendments favored by voters and included in this final order will: 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 market destinations; add a continuance referenda requirement; and remove volume regulation and reserve pool authority from the Order.

USDA also made changes as were necessary to conform the Order provisions to the effectuated amendments. Conforming changes and corrections proposed by USDA include: revising all references of "offgrade" to "off-

grade"; revising all references of "nonnormal" to "non-normal"; and, revising all references of "committee" to "Committee." These corrections will result in consistent spelling of these terms throughout the Order. Also in this final rule, USDA will revise the amendment of § 989.58(d) from "interplant" and "interhandler" to "inter-plant" and "inter-handler" as it appears in amended § 989.59(e).

In addition, the words "Processed Products Standardization and Inspection Branch" in §§ 989.58(d) and 989.59(d) will be changed to "Specialty Crops Inspection Division." Similarly, "Processed Products Branch, Fruit and Vegetable Division" in § 989.102 will be changed to "Specialty Crops Inspection Division." These corrections will reflect the official name change of the AMS's inspection service office for fruit, vegetables and specialty crops.

Lastly, an additional correction will change the amendatory language in §§ 989.55, 989.56, 989.65, 989.66, 989.67, 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401, from "remove" to "remove and reserve." This change will prevent the unintentional renumbering of remaining sections of the Order.

The amended marketing agreement was subsequently mailed to all raisin handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of raisins handled by all handlers during the August 1, 2016, through July 31, 2017, representative period.

Consequently, a companion handler agreement will also be established.

#### **Small Business Consideration**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 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 businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

According to the hearing transcript, there are approximately 3,000 raisin producers in California.

According to National Agricultural Statistics Service data presented at the hearing, the total value of production of raisins in the 2014/15 crop year is \$598,052,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides an average return per producer of \$199,950.67. A small producer as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than \$750,000 annually. Therefore, a majority of raisin producers are considered small entities under SBA's standards.

According to the industry, there were 23 raisin handlers for the 2015/16 crop year. While individual handling operation information is proprietary, both testimonies offered by handler witnesses and an assessment of total value of dried production leads USDA to conclude that 13 handlers would be considered small entities under SBA's standards.

According to the record, two of the 23 handlers handled roughly 60 percent of total production during the 2015/16 crop year. A calculation using the 2014 total value of production of \$598,052,000 puts the value handled by the cooperatives at \$358,831,200 ( $\$598,052,000 \times 60$  percent) and the value handled by all other handlers at \$239,220,800. With 21 non-cooperative handlers remaining,

\$239,220,800 divided by that number results in an average handler receipt of \$11,391,467. Assuming a normal bell-curve distribution, coupled with the number of handlers self-identifying at the hearing as small business entities, USDA accepts the Committee's assertion that 13 handlers fall under the SBA definition of small agricultural service firm. A small agricultural service firm as defined by the SBA is one that grosses less than \$7,500,000 annually. Thus, slightly more than half of the industry's handlers are considered small entities under SBA's standards.

The production area regulated under the Order covers the state of California. Acreage devoted to raisin production in the regulated area has declined in recent years. According to data presented at the hearing, bearing acreage for raisins reached a high of 280,000 acres during the 2000/01 crop year. Since then, bearing acreage for raisins has decreased 32 percent to 190,000 acres in 2014/15. As a result, the total production of raisins reached a high during the 2000/01 crop year of 484,500 tons (dried basis). Since the 2000/01 crop year, total production for raisins has decreased 32 percent to 328,600 tons in 2014/15.

During the hearing held May 3 and 4, 2016, interested

persons were invited to present evidence on the probable regulatory and information collection impact of the proposed amendments to the Order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have any burdensome effects or a significant economic impact on a substantial number of small agricultural producers or firms.

### **Material Issues**

#### **Material Issue Number 1 – Authorize production research.**

This action amends § 989.53 to authorize production research.

Currently, the California Raisin Marketing Board (CRMB) is the funding source for production research for the California raisin industry. Three years ago, payments of assessments to the CRMB were suspended due to the results of litigation. Without funding, the CRMB has been unable to conduct any new production research projects. The amendment to § 989.53 will authorize the RAC to conduct production research without having to rely on the CRMB for funding.

Witnesses stated that future research could potentially impact producers in many ways, such as reducing pesticide usage or the development of new varieties that

are less labor intensive. Production research will provide the raisin industry the ability to meet the needs of the ever changing domestic and international markets.

According to a witness's testimony, the benefits of the proposed amendment will outweigh any costs and will not have a significant impact on a substantial number of small entities.

**Material Issue Number 2 – Authorize separate nominations for independent producer member and independent producer alternate member seats.**

This action amends §§ 989.29 and 989.129 to authorize separate nominations for independent producer members and independent producer alternate member seats.

Currently, the RAC has difficulty filling Committee seats designated for independent producer members and independent producer alternate members. Independent producer alternate member seats have gone unfilled for several consecutive years.

According to witnesses' testimony, this amendment will increase the participation of independent producers willing to participate on the RAC. Allowing for separate nominations for members and alternates will encourage participation by those who wish to serve in one capacity

and not the other. Full participation would give the independent producers full representation on the Board they represented and a voice in RAC decisions.

It is determined that the benefits of increased RAC participation by independent producers will outweigh any costs associated with the implementation of this amendment.

**Material Issue Number 3 – Add authority to regulate quality.**

This action will amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality under the Order. A corresponding change will also revise the heading prior to § 989.58 to include quality.

Currently, §§ 989.58 and 989.59 state that the RAC has the authority to recommend grade and condition standards under the Order. The attribute "quality" is not specifically mentioned. The amendment will add language to include "quality" as an attribute that can be regulated under the Order.

According to a witness at the hearing, the amendment will give the RAC flexibility to ensure consumer safety by setting quality standards for residue levels for herbicides, pesticides or fungicides. The quality standards will be equally applied to all handlers of

raisins within the U.S.; some handlers are already testing for certain types of fungicides so the increased costs will be minimal.

It is determined that the additional costs incurred to regulate quality will be greatly outweighed by the increased flexibility for the industry, increased consumer safety, and other benefits gained from implementing this amendment. The costs of implementing it will not have a significant impact on a substantial number of small entities.

**Material Issue Number 4 – Add authority to establish different regulations for different markets.**

This action will amend § 989.59 to add authority to establish different regulations for different markets.

The Order does not currently allow for different quality or grade standards to be applied to different foreign markets. The language in the Order only has two classifications for grade and condition standards, Grade A or Grade B. The current grade and condition standards are consistent across all markets.

This amendment will give the RAC the authority to develop requirements for raisins intended for export to different foreign markets. Industry will have the

flexibility to tailor product attributes to meet the foreign consumer profile and the customer demands for each individual market.

It is determined that any additional costs incurred for this amendment will be outweighed by the increased flexibility for the industry to respond to a changing global marketplace. The costs of implementing this amendment will not have a significant impact on a substantial number of small entities.

**Material Issue Number 5 – Continuance referenda.**

This action will amend § 989.91 to require continuance referenda.

The amendment will require the USDA to conduct a continuance referendum between year five and year six after implementation for the first referendum, and every six years thereafter. A witness testified that a continuance referendum is the best tool for assuring that the Order remains responsive to the needs of the industry. While a continuance referendum will not directly improve producer returns, it will indirectly ensure that the industry believes that the Order is operating in the producer's best interest.

For these reasons, it is determined that the benefits

of conducting a continuance referendum will outweigh the potential costs of implementing this amendment. The costs of implementing this amendment will be minimal and will not have a significant impact on a substantial number of small entities.

**Material Issue Number 6 – Remove volume regulations and reserve pool authority.**

This action will amend the Order to remove volume regulation and reserve pool authority. This will include: deleting and reserving §§ 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 re-designating § 989.70 as § 989.96.

Corresponding changes will 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.

The amendment will remove all authority for the RAC to recommend volume restrictions and a reserve pool. On June 22, 2015, the United States Supreme Court, in Horne v. USDA, ruled that the application of the Order's reserve

pool authority to the Horne's was a taking under the Fifth Amendment to the U.S. Constitution. In a July 16, 2015, letter to the RAC, USDA stated, "In light of the Horne decision, the U.S. Department of Agriculture has decided not to authorize the reserve program of the Federal marketing order for California raisins for the foreseeable future, effective immediately."

One witness at the hearing explained that bearing acres have declined the past ten years, which supports the theory that the California raisin industry is adjusting to a decreasing or flat demand for the product. The witness stated that, in the future, supply will likely remain in better balance with demand and, therefore, the reserve pool and volume regulation are no longer as relevant as they were in higher production times. To further the point, the witness stated that the Order's reserve pool authority has not been utilized since 2010.

The amendment will be a relaxation of regulatory requirements. For this reason, it is determined that no significant impact on small business entities is anticipated from this change.

The costs attributed to these amendments are minimal; therefore, there will not be a significant impact on a

substantial number of small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California raisins.

RAC meetings regarding these amendments, as well as the hearing date and location, were widely publicized throughout the California raisin industry, and all interested persons were invited to attend the meetings and the hearing to participate in RAC deliberations on all issues. All RAC meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and information collection impacts of this action on small businesses.

#### **Paperwork Reduction Act**

Current information collection requirements for Part 989 are approved by OMB, under OMB Number 0581-0189 - "Generic OMB Fruit Crops." No changes are anticipated in these requirements as a result of this proceeding. Should any such changes become necessary, they will be submitted to OMB for approval.

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.

AMS is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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.

#### **Civil Justice Reform**

The amendments to the Order stated herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments do not preempt any State or local laws, regulations, 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 no later than 20 days after the date of entry of the ruling.

**Order Amending the Order Regulating the Handling of Raisins  
Produced from Grapes Grown in California<sup>1</sup>**

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the Marketing Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in

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<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon further amendment of Marketing Order No. 989, regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record, it is found that:

(1) The Order, as amended, and as hereby further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The Order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order upon which a hearing has been held;

(3) The Order, as amended, and as hereby further amended, is limited in its application to the smallest

regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The Order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of raisins produced from grapes grown in California; and

(5) All handling of raisins produced from grapes grown in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations. It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping raisins covered by the Order as hereby amended) who, during the period August 1, 2016, through July 31, 2017, handled 50 percent or more of the volume of such raisins covered by said Order, as hereby amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory Order, further amending the aforesaid Order, was favored or approved by at least two-thirds of the growers who participated in a referendum on the question of approval and who, during the period of August 1, 2016, through July 31, 2017 (which has been deemed to be a representative period), have been engaged within the production area in the production of such raisins, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) The issuance of this amendatory Order advances the interests of producers of raisins in the production area pursuant to the declared policy of the Act.

**Order Relative to Handling**

It is therefore ordered, that on and after the effective date hereof, all handling of raisins produced from grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby amended as follows:

The provisions of the amendments to the Order contained in the Secretary's Decision issued September 19, 2017, and published in the September 29, 2017, issue of the *Federal Register* (82 FR 45517), with the exception of the

proposal to establish term limits, will be and are the terms and provisions of this Order amending the Order and are set forth in full herein.

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

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 989 is amended as follows:

**PART 989 - RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

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

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

**[Subpart Redesignated as Subpart A]**

2. Designate the subpart labeled "Order Regulating Handling" as subpart A.

3. 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.

4. In § 989.29:

a. Revise paragraph (b) (2) (ii);

b. Redesignate paragraph (b) (2) (iii) as paragraph

(b) (2) (iv);

c. Add 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.**

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(b) \*\*\*

(2) \*\*\*

(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.

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5. In § 989.53, revise the introductory text of paragraph (a), and remove the undesignated paragraph that follows paragraph (a) (5) 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:

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6. 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) *Marketing policy.* 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;

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(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;

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(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.

**§§ 989.55 and 989.56 [Removed and reserved]**

7. Sections 989.55 and 989.56 are removed and reserved.

8. Revise the undesignated heading prior to § 989.58 to read as follows: "Grade, Quality, and Condition Standards".

9. In § 989.58, revise paragraphs (a), (b), (d) (1), (e) (1), and (e) (4) to read as follows:

**§ 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.

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(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 inter-plant or inter-handler transfer of off-grade 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 inter-plant or inter-handler transfer of standard 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 non-normal 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 re-inspected 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.

\*\*\*\*\*

(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.

\*\*\*\*\*

10. 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. The

Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

(b) *Changes to minimum grade, quality, or condition standards.* 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 an 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 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.

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(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.

11. Amend § 989.60 by revising paragraph (a) 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.

\*\*\*\*\*

12. 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.

13. Remove the undesignated heading "Volume Regulation" prior to § 989.65.

**§§ 989.65, 989.66, and 989.67 [Removed and reserved]**

14. Sections 989.65, 989.66, and 989.67 are removed and reserved.

**§ 989.70 [Redesignated as § 989.96]**

15. Redesignate § 989.70 as § 989.96.

**§§ 989.71 and 989.72 [Removed and reserved]**

16. Sections 989.71 and 989.72 are removed and reserved.

17. Amend § 989.73 by revising paragraph (b) 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.

\*\*\*\*\*

18. 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.

19. 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.

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**§ 989.82 [Removed and reserved]**

20. Section 989.82 is removed and reserved.

21. 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.

22. In § 989.91:

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

b. Add new paragraph (c).

The addition reads as follows:

**§ 989.91 Suspension or termination.**

\*\*\*\*\*

(c) No less than five 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.

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**[Subpart Redesignated as Subpart B and Amended]**

23. Redesignate "Subpart-Administrative Rules and Regulations" as subpart B and revise the heading to read as follows:

**Subpart B - Administrative Requirements**

24. 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.

25. Remove the undesignated heading "Marketing Policy" prior to § 989.154.

**§§ 989.154 and 989.156 [Removed and reserved]**

26. Sections 989.154 and 989.156 are removed and reserved.

27. 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.

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28. Remove the undesignated heading "Volume Regulation" prior to § 989.166.

**§§ 989.166 and 989.167 [Removed and reserved]**

29. Sections 989.166 and 989.167 are removed and reserved.

30. In § 989.173:

- a. Remove paragraphs (b) (2) (ii), (f), and (g) (1) (ii);
- b. Redesignate paragraphs (b) (2) (iii) and (g) as paragraphs (b) (2) (ii) and (f), respectively;
- c. Redesignate newly designated paragraph (f) (1) (iii) as paragraph (f) (1) (ii); and
- d. Revise paragraphs (a), (b) (2) (i), newly redesignated paragraph (b) (2) (ii), (c) (1) introductory text, (d) (1) introductory text, (d) (1) (v), and newly redesignated paragraphs (f) (1) (i), (f) (2) (i), and (f) (3) introductory text.

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;

\*\*\*\*\*

(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:

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**[Subpart Redesignated as Subpart C and Amended]**

31. Redesignate "Subpart-Supplementary Regulations" as subpart C and revise the heading to read as follows:

**Subpart C - Supplementary Requirements**

32. 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.**

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(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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**§§ 989.221 and 989.257 [Removed and reserved]**

33. Sections 989.221 and 989.257 are removed and reserved.

**[Subpart Redesignated as Subpart D]**

34. Designate the subpart labeled "Subpart-Assessment Rates" as subpart D.

**[Subpart Removed]**

35. Subpart-Schedule of Payments is removed.

**[Subpart Redesignated as Subpart E]**

36. Designate the subpart labeled "Conversion Factors" as subpart E.

**[Subpart Redesignated as Subpart F]**

37. Designate the subpart labeled "Quality Control" as subpart F.

**[Subpart Redesignated as Subpart G]**

38. Designate the subpart labeled "Antitrust Immunity and Liability" as subpart G.

39. In part 989 revise all references to "offgrade" to read "off-grade" and revise all references to "Offgrade" to read "Off-grade".

40. In part 989 revise all references to "nonnormal" read "non-normal."

41. In part 989 revise all references to "committee" to read "Committee."

**§§ 989.58, 989.59, and 989.102 [Amended]**

42. In the list below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

| Section        | Remove   | Add                                 |
|----------------|--|-------------------------------------|
| 989.58 (d) (1) | Processed Products Standardization and Inspection Branch | Specialty Crops Inspection Division |
| 989.59 (d)     | Processed Products Standardization and Inspection Branch | Specialty Crops Inspection Division |
| 989.102        | Processed Products Branch, Fruit and Vegetable Division  | Specialty Crops Inspection Division |

Dated: October 17, 2018.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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