

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." This 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."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will reduce the desirable carryout for the 1995-96 crop year, beginning August 1, 1995, through July 31, 1996, and for subsequent crop years. This rule will 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 the Secretary 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

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

and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. No more than eight handlers and a majority of producers of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining eight handlers have sales less than \$5,000,000, excluding receipts from any other sources.

This final rule changes section 989.154 of the administrative rules and regulations of the raisin marketing order. The Committee recommended by a vote of 31 to 15 at its April 28, 1995, meeting, to adjust the desirable carryout level in section 989.154 from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995-96 crop year and to two months of shipments in subsequent crop years. The crop year includes the 12-month period August 1 through July 31.

The desirable carryout level is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are harvested and available for market. Currently, section 989.154 provides that the desirable carryout levels shall be equal to the shipments of free tonnage to all outlets for each varietal type during the months of August, September, and one-half of the total shipments for the month of October of the prior crop year.

The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation percentages for each crop year, if necessary.

Beginning in the 1991-92 crop year the desirable carryout was reduced from three months of shipments to two and one-half months of shipments. It was determined that the use of the three month desirable carryout level resulted in excessive supplies of marketable tonnage early in the season.

The Committee has used the two and one-half month desirable carryout figure for four crop years and has determined that the use of this figure has also contributed to an excessive supply of free tonnage at the beginning of the

marketing season. A majority of the Committee members believe that this causes unstable market conditions during the early part of the crop year.

To moderate the oversupply of marketable raisin tonnage early in the season, the Committee recommended that the desirable carryout levels be revised from two and one-half months of the prior year's shipments to two and one-fourth months of the prior year's shipments for the 1995-96 crop year and to two months of the prior year's shipments for subsequent crop years.

The change in the desirable carryout levels reduces the trade demand and the free tonnage percentage, and makes less free tonnage available to handlers for immediate use. However, handlers will still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers during November and other releases of reserve pool raisins available under the marketing order. The 10 plus 10 offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this final rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional supplies to increase their carryouts from the 10 plus 10 offers.

This rule is intended to stabilize the early season raisin market. Bringing early season supplies more in line with market needs is expected to stabilize market prices. This price stabilization should make raisin buyers less likely to postpone their purchases. Thus, decreasing the desirable carryout could strengthen the market and increase shipments, which would benefit raisin producers and handlers.

One alternative that was discussed by the Committee prior to recommending the change was to immediately set the desirable carryout level at two months of the prior year's shipments. It was determined that this was too rapid an adjustment and that first setting the desirable carryout levels at two and one-quarter months for the 1995-96 season and two months in subsequent crop years would be a more prudent approach.

Another alternative considered was setting the desirable carryout at a fixed tonnage. However, this alternative does not allow the desirable carryout to fluctuate with changing market conditions from year to year.

Those voting in opposition to the recommendation to reduce the desirable