

Watch Officer Logs Records system of records notice (SORN) was published concurrently in the **Federal Register**, March 8, 2011, 76 FR 12609, and comments were invited on both the NPRM and SORN.

#### Public Comments

No comments were received on the NPRM or SORN. The Department will implement the rulemaking as proposed.

#### List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

#### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 *et seq.*; Public Law 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph “57”:

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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57. The DHS/OPS–002 National Operations Center Tracker and Senior Watch Officer Logs Records System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/OPS–002 National Operations Center Tracker and Senior Watch Officer Logs Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/OPS–002 National Operations Center Tracker and Senior Watch Officer Logs Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security is exempting this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the

accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

#### Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS–FV–11–0013; FV11–989–1 FR]

#### Raisins Produced From Grapes Grown In California; Increase in Desirable Carryout Used To Compute Trade Demand

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the desirable carryout used to compute the yearly trade demand for Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (committee). This rule increases the amount of tonnage available early in the season when volume regulation is implemented, and is expected to help the industry meet its market needs.

**DATES:** *Effective Date:* July 19, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; *Telephone:* (559) 487–5901, *Fax:* (559) 487–5906; or *E-mail:* [Terry.Vawter@ams.usda.gov](mailto:Terry.Vawter@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone* (202) 720–2491; *Fax:* (202) 720–8938; or *E-mail:* [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the desirable carryout used to compute the yearly trade demand for NS raisins regulated under the order. "Trade demand" is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. "Desirable carryout," one component of this formula, is the amount of tonnage carried in from the prior crop year which is considered necessary to meet market needs, before raisins from the new crop year are available.

Currently, the desirable carryout for NS raisins is defined as: The total shipments of free tonnage during August and September of each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule increases the desirable carryout to 85,000 natural condition tons, with no further calculations required. This action was unanimously recommended by the committee at a meeting held on February 23, 2011.

It should be noted that the desirable carryout for raisin varieties other than NS are not impacted by this change.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in

a reserve pool (reserve) for the account of the committee.

Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carrying and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the committee could adopt other methods for arriving at a desirable carryout in the order's rules and regulations. The current formula has allowed the committee to periodically adjust the desirable carryout to better reflect changes in marketing conditions, as they have since 1989, most recently in 2000 and 2002.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). The formula has been changed over the years because the committee believed that an excessive supply of raisins was available early in a new crop year, which contributed to unstable market conditions.

However, given recent worldwide shortages of NS raisins, a favorable monetary exchange rate, and the extremely low inventory carried in by the industry at the beginning of the 2010–11 crop year, the committee

determined that the current trade demand formula would not provide enough raisins to meet market demands when volume regulation is implemented, especially in the early part of the crop year when supplies can be tight. Thus, the committee recommended increasing the desirable carryout component of the formula. This change also allows desirable carryout of NS raisins to more accurately reflect the amount of NS raisins that handlers actually hold in inventory at the end of a crop year, or about 100,000 tons.

#### The Committee's Recommendation

At a meeting on February 23, 2011, the committee reviewed the desirable carryout level. Most committee members believe that the supply of free tonnage raisins on the market has become tight, and the carryout balance has resulted in market shortages and missed marketing opportunities in the early part of the season. The following table illustrates handler inventories for NS raisins have generally been declining in recent years, with the exception of 2009–10.

CARRYOUT INVENTORY OVER PAST  
6 YEARS  
[Natural condition tons]

Crop year	NS carryout inventory
2010–11 .....	83,143
2009–10 .....	126,824
2008–09 .....	106,249
2007–08 .....	105,430
2006–07 .....	111,444
2005–06 .....	114,792

Committee staff estimated that this change to the desirable carryout level would increase the 2011–12 trade demand for NS raisins by 15,000 tons. Increasing the trade demand will increase the free tonnage percentage, making more free tonnage available to handlers for immediate use. The effect of increased free tonnage would be to decrease any reserve pool which might be established.

NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99, 2003–04, and 2010–11 crop years, volume regulation has been implemented for NS raisins every year since 1983.

#### Final Regulatory Flexibility Analysis

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

Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 28 handlers of California raisins who are subject to regulation under the order and approximately 3,000 raisin producers in the regulated area. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based upon shipment data and other information provided by the committee, it may be concluded that a majority of producers and approximately 18 handlers of California raisins may be classified as small entities.

This rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. "Trade demand" is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. "Desirable carryout," one component of this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. Currently, the desirable carryout for Natural (sun-dried) Seedless (NS) raisins is defined as: The total shipments of free tonnage during August and September of each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher.

This rule increases the desirable carryout to 85,000 natural condition tons, with no calculations required. This action was unanimously recommended by the committee at a meeting held on February 23, 2011.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout will increase the

trade demand and free tonnage percentage, thus making more raisins available to handlers early in the season. This action is expected to provide more raisins at the beginning of each crop year to meet early demand, thereby improving market conditions at a time period when optimum shipments are advantageous—in time for the holidays. Holiday shipments begin in August, before new-crop raisins are available, and continue through October, and have traditionally been the highest shipment period, as buyers prepare for increased holiday sales of raisins and goods containing raisins.

The committee has an appointed subcommittee, the Administrative Issues Subcommittee (subcommittee), which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on February 1, 2011, and discussed desirable carryout, considering a number of alternative levels of desirable carryout. While there was no opposition to increasing the desirable carryout, some industry members supported making the NS desirable carryout 90,000 natural condition tons, while some suggested that 80,000 natural condition tons was a good alternative. Still others suggested that the ideal number might be closer to 100,000 natural condition tons, in keeping with the average of the last several years' actual inventory carried in at the beginning of the crop year, 106,000 natural condition tons. The 85,000 natural condition tons ultimately recommended was a compromise reached during subcommittee deliberations of the alternatives.

On February 23, 2011, the subcommittee met again and further discussed desirable carryout before recommending to the full committee that the desirable carryout be increased for NS raisins from the current formula or 60,000 natural condition tons, whichever is greater, to simply 85,000 natural condition tons. Ultimately, the full committee adopted the subcommittee's recommendation, and unanimously recommended the change to USDA.

This final rule would impose no additional reporting or recordkeeping requirements on either small or large raisin handlers. 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. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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 addition, the subcommittee's meetings on February 1, 2011, and February 23, 2011; and the committee's meeting on February 23, 2011, were public meetings, widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and encouraged to participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on May 13, 2011 (76 FR 27921). Copies of the rule were provided to all committee members and raisin handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 13, 2011, was provided to allow interested persons to respond to the proposal. There were two comments received during the comment period, both in support of the proposed rule. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are aware of this change, which was unanimously recommended at at least one public meeting. In addition, this rule needs to be in effect in time for the beginning of the new crop year, which is August 1, 2011.

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

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

For the reasons set forth 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 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 989.154, the first sentence of paragraph (a) is revised to read as follows:

**§ 989.154 Marketing policy computations.**

(a) *Desirable carryout levels.* The desirable carryout level to be used in computing and announcing a crop year's marketing policy for Natural (sun-dried) Seedless raisins shall be 85,000 natural condition tons.

\* \* \* \* \*

Dated: July 11, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1210**

**[Document Number AMS–FV–10–0093]**

**Watermelon Research and Promotion Plan; Redistricting and Importer Representation**

**AGENCY:** Agricultural Marketing Service, USDA

**ACTION:** Final rule.

**SUMMARY:** This rule changes the boundaries of all seven districts under the Watermelon Research and Promotion Plan (Plan) to reapportion the producer, handler, and importer memberships on the National Watermelon Promotion Board (Board). In addition, the Board is adding two importer seats based on the quantity of watermelon imports in the past three years. These changes are based on a review of the production and assessments paid in each district and the amount of watermelon import assessments, which the Plan requires at least every five years. As a result of these changes, the importer seats will increase from six to eight. Therefore, the total Board membership will increase from 35 to 37 members. In addition, a new Code of Federal Regulation section is added to reflect the importer representation on the Board.

**DATES:** Effective July 19, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Watermelon Research and Promotion Plan [7 CFR part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act (Act) [7 U.S.C. 4901–4916].

**Executive Orders 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect.

The Act allows producers, producer-packers, handlers, and importers to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not established in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601–612], AMS has examined the economic impact of this rule on the small producers, handlers, and importers that would be affected by this rule.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service

firms (handlers and importers) as those having annual receipts of no more than \$7 million. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this rule would be considered small entities. Producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt.

USDA's National Agricultural Statistics Service (NASS) data for the 2010 crop year was about 310 hundredweight (cwt.) of watermelons were produced per acre. The 2010 grower price published by NASS was \$12.00 per hundredweight. Thus, the value of watermelon production per acre in 2010 averaged about \$3,720 (310 cwt. × \$12.00). At that average price, a producer would have to farm over 202 acres to receive an annual income from watermelons of \$750,000 (\$750,000 divided by \$3,720 per acre equals 202). Accordingly, as previously noted, a majority of the watermelon producers would be classified as small businesses.

Based on the Board's data, using an average of freight on board (f.o.b.) price of \$.0164 per pound and the number of pounds handled in 2010, none of the watermelon handlers had receipts over the \$7.5 million threshold. Therefore, the watermelon handlers would all be considered small businesses. A handler would have to ship over 457 million pounds of watermelons to be considered large (457,317,073 times \$.0164 f.o.b. equals \$7,500,000).

According to the Board, there are approximately 950 producers, 230 handlers, and 137 importers who are required to pay assessments under the program.

Based on the watermelon import assessments received for the year 2010, the United States imported watermelons worth over \$260 million dollars. The largest imports of watermelon came from Mexico which accounted for 93 percent of the total in 2010. Other suppliers of imported watermelon are Guatemala at 3 percent and Honduras at 1 percent. The remaining 3 percent of imported watermelon came from Canada, Netherlands, Nicaragua, Nigeria, and Panama.

The Board's assessment records show imports for the years 2007, 2008, and 2009 at \$681,565, \$783,249, and \$742,363 respectively. Based on this data, the three-year average annual imports for watermelon total \$735,725 (2,207,177 divided by 3). This represents approximately 29 percent of the total assessments paid to the Board. Currently there are 6 importers on the Board representing 17 percent of the