

§ 989.160

least 2 years, and permit representatives of the Committee and of the Secretary of Agriculture to examine all of his books and records relating to raisins and residual material.

(iii) Each such application shall also include a provision for liquidated damages wherein the handler, in consideration of the Committee approving his application, agrees that in the event any raisins or raisin residual material covered by the approved application should be shipped to points outside of the continental United States or to Alaska, or disposed of in other than eligible non-normal outlets, by any person, it will cause serious and substantial damage to the Committee, to producers, and to handlers of raisins and will be difficult, if not impossible, to prove the extent of such damage. Therefore, the handler shall pay to the Committee a sum equal to the established field price as liquidated damages for each ton so shipped or disposed of, such sum being a fair measure of damages and not a penalty.

(iv) The Committee shall notify the applicant in writing of its approval action. In acting on an application, the Committee may disapprove the application when: (a) The application is incomplete, or any required information has not been submitted; (b) the Committee has cause to believe that the raisins or raisin residual material covered by the application will not be shipped or disposed of in accordance with the application; or (c) the handler, or any of the parties involved in the proposed shipment or disposition, had shipped or made disposition or use of raisins or raisin residual material covered by a previously approved application inconsistent with that application. When the use or the name and address of the user or consignee are not known to the handler, the Committee shall not approve the application until it has been informed as to such use and user and consignee of the raisins or residual material.

(v) The Committee may, for cause, revoke any previously approved application of a handler if the handler, buyer, consignee or user covered by the application has shipped or made disposition inconsistent with any approved application. The Committee

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shall notify the handler in writing of such revocation.

(vi) The handler shall furnish the Committee with a copy of the shipping document or other documentary evidence of the disposition as may be satisfactory to the Committee and at such times as the Committee may direct.

(h) *Appeal inspection.* An appeal inspection on an original inspection may be obtained from the inspection service upon the request of any financially interested party and upon the payment of any fees assessed by the inspection service for such appeal inspection.

[27 FR 3112, Mar. 31, 1962, as amended at 30 FR 6906, May 21, 1965; 31 FR 16306, Dec. 21, 1966; 36 FR 13980, July 29, 1971; 38 FR 13012, May 18, 1973; 38 FR 20237, July 30, 1973; 42 FR 52377, Sept. 30, 1977; 49 FR 18731, May 2, 1984]

§ 989.160 Exemptions.

(a) Any processor may receive or acquire any raisins for use in eligible nonnormal outlets, and dispose of them for such use, without having them inspected and certified. Processors receiving or acquiring raisins under such exemption, or otherwise receiving or acquiring raisins which do not meet the applicable minimum grade and condition standards, shall not ship or otherwise dispose of any such raisins except in conformity with the provisions of § 989.159(g)(2). Processors shall report receipts and acquisitions and make such other reports as are or may be required pursuant to §§ 989.73 and 989.173.

(b) *Disposition of raisins produced in Southern California.* Raisins produced from grapes dried on the vine in the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego, which are disposed of for use in distillation or livestock feed, shall be exempt from the provisions of this part.

[30 FR 6906, May 21, 1965, as amended at 38 FR 13013, May 18, 1973; 59 FR 44031, Aug. 26, 1994]

VOLUME REGULATION

§ 989.166 Reserve tonnage generally.

(a) *Set-aside obligations—(1) Natural (sun-dried) Seedless.* Handlers who acquire any lot of natural condition Natural (sun-dried) Seedless raisins which have been dipped in or sprayed with

water, with or without chemicals prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless (i.e., Fiesta, Emerald Seedless, Perlette, Delight, and other similar grape varieties), may set aside such raisins to satisfy their reserve pool obligation: *Provided*, That such raisins shall be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until raisins are processed or disposed of as natural condition raisins: and *Provided further*, That such raisins shall not be delivered to the Committee or transferred to another handler without approval of the Committee or the receiving handler.

(2) *Mixed varietal types*. A handler who acquired any lot of natural condition raisins of mixed varietal types (commingled within their containers) shall meet the reserve tonnage setaside obligation for each varietal type contained in the mixed lot by setting aside raisins of each such varietal type which have not been mixed or commingled with raisins of any other varietal type. The obligation as to each varietal type shall be computed according to the reserve percentage established by the Secretary, and the percentage of the varietal type contained in the mixed lot as shown by the incoming inspection certificate applicable thereto.

(b) *Storage of reserve tonnage raisins*—

(1) *Time limits for setting aside pool tonnage*. Handlers shall be allowed 3 calendar days (exclusive of Saturdays, Sundays, and holidays), after the preliminary or interim percentages have been computed and announced by the Committee, and after the publication in the FEDERAL REGISTER of the applicable final reserve percentages established for the crop year, or after any reserve tonnage raisins are acquired subsequent to the percentages being announced or established, to segregate and properly stack each varietal type of reserve tonnage raisins.

(2) *Conditions*. Each handler shall store reserve tonnage raisins in storage and under conditions which protect

them from rain and which reasonably can be expected to maintain the raisins free of any biological or other infestation or contamination. Each handler shall, pursuant to §989.66(b)(2), store each varietal type of reserve tonnage raisins held by him for the account of the Committee, separate and apart from all other raisins. Storage of such raisins shall be deemed "separate and apart" if the containers are so marked and placed as to be capable of ready and clear identification as to the category in which are held. Reserve tonnage raisins shall be stored in sweat boxes, picking boxes, or other portable containers not exceeding one ton capacity:

(3) *Substitution of free tonnage*. A handler may, pursuant to §989.66(b)(3), after giving the Committee reasonable advance notice in writing and under its direction and supervision, substitute standard raisins for reserve tonnage raisins.

(c) *Remedy in the event of failure to deliver reserve tonnage raisins*. A handler who fails to deliver to the Committee, upon request, any reserve tonnage raisins in the quantity and quality for which he has become obligated (after any shrinkage allowances which may then be in effect are applied and allowances for any deterioration due to conditions beyond his control are made) shall compensate the Committee for the amount of the loss resulting from his failure to so deliver. The amount of compensation for any shortage of tonnage shall be determined by multiplying the quantity of reserve raisins not delivered by the latest weighted average price per ton received by producers during the particular crop year for free tonnage raisins of the same varietal type or types, plus any charges already paid or credited to the handler and cost incurred by the Committee on account of the handler's failure to deliver. The weighted average price shall be determined from those sales made during the particular crop year up to the time such cash payment is requested by the Committee, or up to the end of the particular crop year, whichever date may be earlier. The amount which a handler shall compensate the Committee for any reserve raisins which have deteriorated so as to be off-

grade in quality during storage for reasons within his control, shall be the latest weighted average price received by the Committee for the applicable varietal type of reserve pool raisins, less the amount actually received by the Committee in the disposition of the deteriorated raisins delivered by the handler (or the salvage value of such raisins as determined by the Committee). Any amounts paid to the Committee in satisfaction of such deficiencies shall accrue to the earnings of the applicable reserve pool. The remedies provided in this paragraph shall be in addition to, and not exclusive of, any or all of the remedies or penalties prescribed in the act for failure on the part of the handler to comply with the applicable provisions of the act or of this part.

(d) *Disposition of reserve tonnage raisins which become off-grade for causes beyond the handler's control.* Any reserve tonnage raisins held by or for the account of the Committee which become off-grade for reasons beyond the handler's control shall, at the Committee's discretion, be reconditioned or disposed of by the Committee, or under the Committee's control, in eligible non-normal outlets. Any monetary loss sustained in the reconditioning or disposition of such raisins, not covered by insurance carried by the Committee, shall be charged to the applicable reserve pool.

(e) *Offers of reserve tonnage raisins to handlers for sale in export.* Whenever the Committee offers reserve tonnage raisins to handlers for sale in export, it shall specify in addition to the normal contract terms and conditions, the total quantity, the price and period within which each handler will be permitted to purchase his share of the offer. Whenever a handler's share of an offer is less than, or exceeds, his holding of reserve tonnage raisins by not more than 10 tons, the Committee may adjust his share so as to avoid the cost involved in the physical transfer of raisins. If, prior to the expiration of the offer period, a handler desires to obtain reserve tonnage in an amount greater than that represented by his share of the offer, he may negotiate with another handler for any unpurchased portion of the other handler's share of an

outstanding offer. No such transaction shall be deemed to reduce the transferring handler's share or to increase the transferee handler's share so as to affect either handler's share privileges in subsequent offers. Transfers to implement such transactions between handlers shall be permitted by the Committee only upon receipt of written authorization, on a form furnished by the Committee, by the transferring handler. All limitations applicable to the transferred tonnage shall continue to apply. Such reserve tonnage raisins will be released by the Committee to the transferee handler upon submission of his completed application and full payment for such raisins, and such transferee handler shall be responsible to the Committee for all documentation required in connection with the transaction. All such transfers shall be made at the expense of the handlers concerned.

[32 FR 15916, Nov. 21, 1967, as amended at 38 FR 14960, June 7, 1973; 42 FR 52377, Sept. 30, 1977; 49 FR 18731, May 2, 1984; 54 FR 29327, July 12, 1989; 56 FR 38072, Aug. 12, 1991]

§989.167 Disposal of reserve raisins.

(a) *Offer of reserve tonnage raisins for use in noncompetitive outlets.* Whenever the Committee proposes to offer to sell standard reserve tonnage raisins in noncompetitive outlets pursuant to §989.67 (a) and (b), it shall promptly file with the Secretary complete information with respect thereto and the basis therefor. The Secretary shall have the right to disapprove, within seven calendar days, the making of such an offer or sale or any term or conditions thereof.

(b) *Determination of price of reserve tonnage sold for free tonnage use.* Whenever, pursuant to §989.67(j), the Committee concludes, with respect to any varietal type of raisins, that a downward trend in the price received by producers for free tonnage, or in the prices received by handlers for free tonnage packed raisins, makes it impracticable to sell reserve tonnage at the average price received by producers for free tonnage plus pooling costs, the Committee, subject to the requirements of §99.67(j), may sell reserve tonnage raisins at the currently prevailing field price for free tonnage raisins of the