

(xi) That the association shall permit the Committee, the inspection service, and the Secretary of Agriculture, through their duly authorized representatives, to have access to the premises of the association's receiving station(s) to inspect such premises and any raisins thereon and any and all records with respect to the association's receipts, holdings and dispositions of raisins.

(xii) That upon approval of the application and agreement the Committee will notify handlers of such approval and that eligible lots of inspected raisins will not require incoming inspection at handler inspection points; will notify the interested handlers of any suspension or revocation, for good cause, of the eligibility of a particular lot of raisins; and will notify handlers of any suspension or termination of the application and agreement.

(xiii) That the Committee will request the inspection service to establish a fee to the association for the services to be rendered at the same rate as is charged handlers.

(xiv) That the application and agreement may be suspended or terminated as provided therein.

(3) *Waiver of requirement for incoming inspection at handler inspection point.* Any lot of raisins which (i) is inspected on the premises of the association's receiving station(s) pursuant to an approved application and agreement, (ii) is in compliance with the provisions of such application and agreement and this paragraph, (iii) is moved under the surveillance of the inspection service to a handler's inspection point from the association's receiving station(s) after issuance of the related memorandum report of inspection, and (iv) is accompanied by such memorandum report to be furnished to the handler may be received by the handler without the inspection as required by § 989.58(d) at time of receipt.

(4) *Handler's obligations.* With respect to such raisins received by the handler, the handler shall comply with all applicable requirements and procedures of this part, including, but not limited to, the inspection prescribed in § 989.59 and that required, as prescribed in § 989.58(d), prior to the handler acquiring reconditioned raisins. Immediately

upon a handler receiving any such raisins accompanied by the applicable memorandum report of inspection, the handler shall give to the inspector at the handler's inspection point where such raisins are received, the original and one copy of the memorandum report so that the inspector may enter the net weight and scale ticket number on such memorandum report of inspection and copy thereof.

[27 FR 3112, Mar. 31, 1962, as amended at 27 FR 10249, Oct. 19, 1962; 27 FR 10409, Oct. 25, 1962; 28 FR 13544, Dec. 14, 1963; 31 FR 16305, Dec. 21, 1966; 32 FR 15915, Nov. 21, 1967; 32 FR 17467, Dec. 6 1967; 35 FR 16037, Oct. 13, 1970; 38 FR 20237, July 30, 1973; 42 FR 52377, Sept. 30, 1977; 49 FR 18731, May 2, 1984; 49 FR 33994, Aug. 28, 1984; 55 FR 2226, Jan. 23, 1990; 55 FR 36608, Sept. 6, 1990]

§ 989.159 Regulation of the handling of raisins subsequent to their acquisition.

(a) *Inspection facilities.* At each of the premises where packed raisins are to be inspected each handler shall, at his expense provide reasonably safe and adequate space and other facilities necessary for the proper and efficient inspection of such raisins.

(b) *Identification of inspected raisins.*

(1) Each handler shall mark each shipping container with legible code or other identification, satisfactory to the Committee and the inspection service which shall indicate (i) with respect to packed raisins, the date that the raisins in such shipping containers were packed, and (ii) with respect to shipments of natural condition raisins, the date on which such raisins were inspected.

(2) Each handler shall furnish promptly to the Committee, through the inspection service, a certified report on a form furnished by the Committee showing the handler's count and weight of the raisins of each pack and varietal type packed each day.

(c) *Outgoing inspection.* (1) Outgoing inspection and certification of raisins as required by § 989.59(d) shall be made as set forth in this paragraph.

(2) Such inspection of natural condition raisins (which is subject to exceptions and exemptions provided in this part) shall be made of each individual lot and in each case not more than five days before the date of shipment or

other final disposition of the lot. The certificate that the raisins meet the applicable minimum grade and condition standards for natural condition raisins, which the handler is required to obtain and submit to the Committee pursuant to § 989.59(d), shall be on Form FV 146 labeled "Certificate of Quality and Condition (Processed Foods)." If shipment involves exportation to a foreign country, the handler shall surrender to the United States Customs Service at the port of exit two copies of such inspection certificate. Such an inspection and certification (on Form FV 146) may, if requested by the handler, be made at the time of his receipt or acquisition of the raisins. In such an event, no additional inspection shall be required if the lot remains intact and identifiable, and shipment or other final disposition takes place within five days after the date of the inspection.

(3) Such inspection of packed raisins shall be made prior to shipment or other final disposition, and unless made during the final processing or packing operations so as to facilitate proper sampling, the inspector shall perform the inspection on the basis of representative samples drawn from shipping containers of the packed raisins.

(4) Except as otherwise provided in this part, where there is presented for inspection a lot of packed raisins consisting of raisins of different varietal types or sub-types commingled within their containers, each such type and sub-type shall be inspected separately, except that inspection for moisture shall be performed on the lot as a whole. The inspection certificate shall show the respective percentages which the raisins of the various types and sub-types are of the lot and whether each meets the applicable minimum grade standards. In the event the raisins of any such varietal type or sub-type contained in the lot fail to meet the applicable requirements, other than for moisture, none of the lot shall be certified as meeting minimum grade standards unless it is found to be practicable to separate the raisins into two new lots, one which meets and the other which fails to meet all of the applicable minimum standards, respec-

tively. Any lot of mixed types or sub-types of packed raisins for which minimum grade standards are prescribed for each type or sub-type pursuant to § 989.59 (a) and (b) but which in their commingled form cannot be inspected against the standards for the respective varietal types or sub-types and hence are excluded from the category of "Mixed types" as defined in the then effective United States Standards for Grades of Processed Raisins, or any raisins which as a mixed lot contain moisture in excess of 18 percent, shall not be certified as meeting the minimum grade standard for packed raisins.

(d) *Submission of inspection certificates to the Committee.* A copy of each inspection certificate which a handler is required to submit to the Committee pursuant to § 989.59(d) shall be submitted not later than Wednesday of the week following the week in which the certificate was issued. This may be accomplished by authorizing the inspection service in writing to submit a copy of each such inspection certificate directly to the Committee. A copy of such authorization shall be furnished to the Committee.

(e) *Term of inspection certificate.* Any handler who:

(1) Fails to ship or make other final disposition for human consumption of any lot of packed raisins within 90 calendar days, or of any lot of natural condition raisins within 5 calendar days, after the date of the last inspection of the lot; or

(2) Has any shipment or portion of a shipment returned to his inspection point or storage premises within the area,

shall, before any such shipment or final disposition, or before blending with other raisins, have such raisins inspected for condition and shall furnish promptly to the Committee (which may be through the inspection service as provided in § 989.158(b)) a copy of the inspection certificate showing that the raisins meet the respective requirements of this part for shipment, final disposition or blending.

(f) *Exemption of experimental and specialty packs—(1) Shipment under exemption.* Upon obtaining approval of the

Committee as provided in this paragraph, any handler may ship or dispose of raisins in experimental or specialty packs without regard to one or more of the requirements of the minimum grade standards for packed raisins and inspection and certification requirements, prescribed pursuant to §989.59. For the purpose of this exemption, experimental and specialty packs means raisins processed using methods, materials, or techniques that are not normally employed in packing raisins.

(2) *Application for exemption.* Each application for exemption shall be filed with the Committee in triplicate. The application shall at least contain information as to: (i) The name and address of the handler; (ii) the estimated quantity of each varietal type of raisins for which the exemption is requested; (iii) the specific requirements in the minimum grade standards from which exemption is requested; (iv) the special processing involved; (v) the net weight of each type of container; (vi) whether disposition will be made direct to consumers, wholesalers, retailers, persons, or organizations, and any special uses to be made of such raisins; and (vii) the general quality, style, and condition of the raisins for which the exemption is requested.

(3) *Committee action on application.* The Committee in its discretion shall approve each application for exemption of raisins, if it concludes that such exemption shall not jeopardize the objectives of the marketing order program. The Committee shall notify the handler promptly in writing of its approval or disapproval of his application and, if the application is approved, the maximum quantity for which approval is granted. If the application is disapproved, the Committee shall inform the handler of the reasons therefor.

(4) *Reports.* The handler shall report shipments or other dispositions under an approved exemption as required pursuant to §989.173(e).

(g) *Off-grade raisins, other failing raisins, and raisin residual material—(1) Recovery of raisins.* For the purposes of §§989.59(f) and 989.158(c)(4), a packer may recover raisins from: (i) Residual raisins from his processing of standard raisins; (ii) any raisins acquired as standard raisins which fail to meet the

applicable outgoing grade and condition standards; (iii) any raisins rejected on a condition inspection; and (iv) residual raisins from reconditioning of off-grade raisins: *Provided,* That such recovery under paragraph (g)(1) (ii) and (iii) of this section must occur without blending, if the failure to meet the minimum grade standards for packed raisins is due to a defect or defects affecting the wholesomeness of the raisins: *And provided further,* That such recovery under paragraph (g)(1)(iv) of this section must occur without blending, except as permitted in §989.158(c)(4)(ii), and the weight of standard raisins in residual from off-grade raisins shall be credited equitably to the same lot or lots from which the residual was obtained. The provisions of this paragraph are not intended to excuse any failure to comply with all applicable food and sanitary rules and regulations of city, county, state, federal, or other agencies having jurisdiction.

(2) *Disposition.* (i) Except as authorized in this part, no handler shall ship or otherwise dispose of any off-grade raisins, other failing raisins, or raisin residual material. Any handler may ship, transfer, or otherwise dispose of off-grade raisins, other failing raisins, and raisin residual material to or at points within the continental United States (other than Alaska) for use in eligible nonnormal outlets only after filing with the Committee a written application to make such shipment, transfer, or other disposition and receiving its written approval thereof. However, the requirements of prior filing and approval of any such application shall not apply to:

(a) The transfer of any such raisins or residual material by a handler from one of his plants to another of his plants in the State of California, except any transfer of raisins which are for reconditioning shall be in accordance with §989.158(c)(3);

(b) Any interpacker transfer or removal of off-grade raisins made in accordance with §989.158(c)(3) and of unsuccessfully reconditioned off-grade raisins which have been stemmed (other failing raisins) made in accordance with §989.158(c)(6)(ii);

(c) Any return by a handler of unstemmed off-grade raisins to the tenderer in accordance with § 989.158(c)(7);

(d) Any shipment or transfer of off-grade raisins, other failing raisins, or raisin residual material by any handler to a processor within the State of California for use, within the State, in eligible nonnormal outlets;

(e) Any shipment or transfer of off-grade raisins, other failing raisins, or raisin residual material by a handler to any person with an effective agreement with the Committee, in which he agrees (1) to use such raisins and raisin residual material only in eligible non-normal outlets, (2) if not so used, to pay to the Committee liquidated damages in the amount and under the conditions specified in paragraph (g)(2)(iii) of this section, and (3) to maintain complete, accurate, and current records regarding his dealings in raisins and raisin residual material, retain the records for at least 2 years, and permit representatives of the Committee and Secretary of Agriculture to examine all of his books and records relating to raisins and residual material; and

(f) Any direct use by the handler of such raisins or material in eligible nonnormal outlets within the State of California.

(ii) Each such application shall, in addition to the agreement specified in paragraph (g)(2)(iii) of this section, include as a minimum: (a) The names and addresses of the handler, the buyer, the consignee, and the user; (b) the quantity of off-grade and other failing raisins and the quantity of raisins residual material to be shipped or otherwise disposed of; (c) a description of such off-grade raisins and other failing raisins and raisin residual material, as to type or origin; (d) the present location of such raisins and raisin residual material; (e) the particular use to be made of the raisins; and (f) a copy of the sales contract, which may be on a form furnished by the Committee, wherein the buyer agrees:

(1) Not to ship such raisins or raisin residual material to points outside the continental United States or to Alaska;

(2) To dispose of the raisins or raisin residual material only for uses in eligible non-normal outlet(s); and

(3) To maintain complete, accurate, and current records regarding his dealings in raisins, retain the records for at 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.

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(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 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]

§ 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), or that have been treated with Oleate or similar drying agents, or such other Natural (sun-dried) Seedless raisins that have been produced using other cultural practices as recommended by the Committee with the approval of the Secretary, 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,