

working group who visited the Department's headquarters' office in April 1999 to discuss the Committee's proposal.

Finally, regardless of the recommendation of the Committee or its working group, it is the Department of Agriculture that makes the decision to adopt this rule after a thorough consideration of all the evidence and views of the entire industry.

Accordingly, no changes have been made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comments received in response to the proposed rule, 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: (1) This action needs to be in effect by August 12, 1999, which is the date of the Committee's meeting where the 1999-2000 trade demand will be announced; (2) producers and handlers are aware of this action which was recommended at a public meeting; and (3) a 20-day comment period was provided in the proposed rule, and the comments received in response to that rule were addressed herein.

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. The undesignated center heading preceding § 989.154 is revised to read "Marketing Policy."

3. Section 989.154 is revised to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to total shipments of free tonnage of the prior crop year during August,

September, and one-half of October, for each varietal type, converted to a natural condition basis: *Provided*, That, should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August, September, and one-half of October during one of the three crop years preceding the prior crop year.

(b) *Estimated trade demand.* Pursuant to § 989.54(e)(4), estimated trade demand is a figure different than the trade demand computed according to the formula in § 989.54(a). The Committee shall use an estimated trade demand to compute preliminary and interim free and reserve percentages, or determine such final percentages for recommendation to the Secretary for 1999-2000 crop Natural (sun-dried) Seedless (NS) raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand: *Provided*, That the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 1999-2000 NS raisin crop estimate is less than 235,000 natural condition tons.

§ 989.157 [Amended]

4. A new undesignated center heading is added preceding § 989.157 to read "Quality Control."

Dated: August 9, 1999.

Kathleen A. Merrigan,
Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 390

[Docket No. 99-034F]

Electronic Freedom of Information Act

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the administrative procedures of the Food Safety and Inspection Service (FSIS) by implementing the provisions of the Department of Agriculture's (USDA) final rule entitled USDA Freedom of Information Act. Issued on May 4, 1999, the departmental rule authorizes substantive administrative changes to be made by agencies to conform to the requirements of the Electronic Freedom

of Information Act (EFOIA) Amendments of 1996 and instructs agencies to promulgate regulations implementing certain of its requirements. Therefore, FSIS is amending its regulations to comply with the departmental regulations. The regulations establish a fourth category of "reading room records" in electronic format and require the Agency to make all records it has created on or after November 1, 1996 available electronically on a World Wide Web site by November 1, 1997. The electronic availability obligation applies not only to records in the new fourth reading room category but also to more traditional reading room records created by the Agency, such as staff manuals and other materials regularly requested by the public.

DATES: This final rule is effective August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Hicks, Director, Executive Management and Coordination Staff, FSIS, at (202) 690-3881 or by FAX at (202) 205-0158.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) evolved from the 1958 Administrative Procedure Act disclosure requirement. FOIA was enacted in 1966. In 1967, it was codified as section 552 of Title 5 of the United States Code (U.S.C.). FOIA establishes a presumptive right for any member of the public to obtain identifiable, existing records of Federal departments and agencies without indicating a reason or need for seeking the information. Any member of the public may use the FOIA to gain access to Government information. However, agencies also may deny access to records, or portions of records, which fall under enumerated exemptions, such as information that is classified for national defense or business information involving trade secrets.

As is the case with all Federal agencies, FSIS is subject to the provisions of FOIA, which require agencies to make certain documents available for public inspection and duplication and to process requests from the public for documents. FOIA requests received by FSIS are often for documents produced daily by inspection personnel stationed in more than 6,000 meat, poultry, and egg processing plants throughout the country and in U.S. territories.

FSIS receives approximately 1,000 FOIA requests each year. About 40 percent of the requests processed by the

Agency involve documents of 200 pages or more. However, document length can range from a single page to 5,000 pages. Because Federal agencies are required to maintain copies of any information that is released to the public, FSIS now maintains voluminous paper files associated with its FOIA function.

In 1996, Congress enacted the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231; 110 Stat. 3048). These amendments acknowledge the widespread use of computers and other means of electronic telecommunications by Federal agencies and address the subject of electronic records for the first time in the history of the statute.

USDA issued its implementing regulation on May 4, 1999 (63 FR 24467). Specifically, the final rule requires FSIS and other departmental agencies to make available on-line, for public inspection and reproduction, copies of any records that, because of the nature of their subject matter, are likely to elicit additional requests. The regulation requires that agencies provide information in the form requested (for example, paper or computer diskette) if the information is readily reproducible in that form. The regulation also extends the time for responding to a FOIA request from 10 to 20 working days (excepting Saturdays, Sundays, and Federal holidays), modifies the requirements for reporting FOIA activities to Congress, and specifies cases in which agencies may extend the time in which it will respond to a FOIA request. The regulation also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, the establishment of electronic reading rooms, and the tracking and expedited processing of requested materials.

Other important features:

- Agencies may process requests according to the level of effort rather than on a strict first-in, first-out basis.
- When denying a request, an agency must try to estimate the volume of any denied material and provide that estimate to the requester, unless doing so would harm an interest protected by an exemption.
- Agencies redacting electronically transmitted materials must provide a record of the location and extent of any deletions made.
- Certain categories of requesters would receive priority treatment of their requests if failure to obtain information would pose an imminent threat to life or physical safety or if there is an urgency in informing the public about Federal activity.

- If the extra 10 working days is still insufficient time to respond to an unusually burdensome request, an agency must inform the requester that the request cannot be processed within the statutory time limits. The agency will provide the requester an opportunity to limit the scope of the request or arrange a negotiated deadline for processing the request. If the requester refuses and then seeks judicial review, that refusal will be considered as a factor in determining whether "exceptional circumstances" exist.

- "Exceptional circumstances" will not include a delay that results from a predictable agency workload of FOIA requests unless the agency demonstrates reasonable progress in reducing its backlog.

This final rule does not affect substantively any member of the public, but constitutes a modification in administrative procedures that requires FSIS to update its public information system by adding an electronic component. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making this final rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. Executive Order 12866 and Regulatory Flexibility Act.

FSIS has determined that this final rule is not a significant regulatory action for the following reasons. The rule does not have an annual effect on the economy of \$100 million or more and does not adversely affect the economy or any segment of the economy. Therefore, FSIS has determined that this final rule is not a significant rule under Executive Order 12866, and it has not undergone review by the Office of Management and Budget (OMB).

Executive Order 12898

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," FSIS has considered the potential impact of this final rule on environmental and health conditions on low-income and minority communities

and determined that there will be no impact. This rule represents a modification in administrative procedures.

Paperwork Reduction Act

The paperwork requirements for this final rule have been approved by OMB under control number 0583-0092.

This rulemaking is part of the Reinventing Government effort. The intent of this action is to reduce the number of future requests for identical information and to lessen the paperwork burden and duplication costs by encouraging the Agency to use newer technology to increase public access to Government information.

List of Subjects in 9 CFR Part 390

Freedom of information.

For the reasons discussed in the preamble to this rule, FSIS is amending 9 CFR part 390 of the Federal meat and poultry products inspection regulations as follows:

PART 390—FREEDOM OF INFORMATION

1. The authority citation for part 390 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR 1.3, 2.7.

2. Section 390.1 is revised to read as follows:

§ 390.1 Scope and purpose.

This part is issued pursuant to the Freedom of Information Act (FOIA) as amended (5 U.S.C. 552), and in accordance with the directives of the Department of Agriculture regulations in part 1, subpart A, of Title 7. The availability of records, including electronic records created on or after November 1, 1996, of the Food Safety and Inspection Service (FSIS), and the procedures by which the public may request such information, will be governed by the FOIA and by the Department regulations as implemented and supplemented by the regulations in this part.

3. Section 390.2 is revised to read as follows:

§ 390.2 Published materials.

FSIS rules and regulations relating to its regulatory responsibilities and administrative procedures are published and made available to the public in the **Federal Register** and codified in chapter III, title 9, of the Code of Federal Regulations. FSIS also issues numerous publications relating to Agency programs, which implement the laws listed in the Delegation of Authority, 7 CFR 2.15(a). Most of these publications

are available free from the USDA Publications Division, Office of Governmental and Public Affairs, or at established rates from the Superintendent of Documents, U.S. Government Printing Office, Washington, 20402-9328.

4. Section 390.3 is revised to read as follows:

§ 390.3 Indexes, reference guide, and handbook.

(a) Pursuant to the regulations in 7 CFR 1.4(c), FSIS will maintain and make available for public inspection and copying an index providing identifying information regarding the materials required to be published or made available under the Freedom of Information Act (5 U.S.C. 552(a)(2)). The Agency will make the index available by computer telecommunications by December 31, 1999. Quarterly publication of the index is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of quarterly publication. The Agency will provide copies of any index, upon request, at a cost not to exceed direct cost of duplication.

(b) FSIS is responsible for preparing reference material or a guide for requesting records or information from the Agency. This guide also will include an index of all major information systems and a description of major information and record locator systems.

(c) FSIS will prepare a handbook for obtaining information from the Agency. The handbook will be available on paper and through electronic means, and will discuss how the public can use it to access Agency FOIA annual reports. Similarly, the annual reports will refer to the handbook and how to obtain it.

5. Section 390.4 is revised to read as follows:

§ 390.4 Facilities for inspection and copying.

Facilities for public inspection and copying of the material described in §§ 390.2 and 390.3 of this part will be provided by FSIS pursuant to 7 CFR 1.5(a) in a reading area, on business days between the hours of 8:30 a.m. and 4:30 p.m., upon request to the Freedom of Information Coordinator or designee at the following address:

Freedom of Information Act Coordinator
(FOIA), Food Safety and Inspection
Service, Department of Agriculture,
Washington, DC 20250-3700

6. Section 390.5 is revised to read as follows:

§ 390.5 Request for records.

(a) The FOIA Coordinator of FSIS is authorized to receive requests and to exercise authority under 7 CFR 1.3(a) to—

- (1) Make determinations to grant or deny such requests,
- (2) Extend the 20-day deadline,
- (3) Make discretionary releases of exempt records, except where disclosure is specifically prohibited by Executive Order, statute, and applicable regulations,
- (4) Consider expedited processing when appropriate,
- (5) Make determinations regarding the charging of fees pursuant to the established schedule, and
- (6) Determine the applicability of 7 CFR 1.5 to requests for records.

(b) Requests for FSIS records or information will be made in writing in accordance with 7 CFR 1.5 and submitted to the FSIS Freedom of Information Act Coordinator at the following address:

Freedom of Information Act Coordinator
(FOIA Request), Food Safety and
Inspection Service, Department of
Agriculture, Washington, DC 20250-3700

The submitter will identify each record with reasonable specificity as prescribed in 7 CFR 1.3. All requests to inspect or obtain copies of any record or to obtain a fee waiver must be submitted in writing.

(c) In exercising authority under 7 CFR 1.3(a)(3) to grant and deny requests, the Coordinator or designee will comply with subsection (b) of the Freedom of Information Act (5 U.S.C. 552(b)), as amended, which requires that any reasonably segregated portion of a document will be provided to a person requesting the document after deletion of any portions within the scope of the request for which an exemption is being claimed under the Act. Therefore, unless the disclosable and nondisclosable portions are so inextricably linked that it is not reasonably possible to separate them, the document will be released with the nondisclosable portions deleted. The Coordinator or designee may exercise discretion as limited by 7 CFR 1.15 to release the entire document or make only a minimum number of deletions. If portions of a document in electronic format have been redacted, the Agency must indicate, on the released portion of the document, the amount of information that has been deleted from a record, unless that indication would harm an interest protected by an applicable exemption.

7. Section 390.6 is revised to read as follows:

§ 390.6 Fee schedule.

Department regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.17. Fees to be charged are in 7 CFR part 1, subpart A, appendix A.

8. Section 390.7 is revised to read as follows:

§ 390.7 Appeals.

(a) If the request for information or for a waiver of search or duplication is denied, in whole or in part, the FOIA Coordinator or designee will explain in the letter of response the grounds for any denial of access and offer the requester an opportunity to file an administrative appeal, pursuant to 7 CFR 1.3(a)(4). The appeal should be filed in writing within 45 days of the date of denial (departmental regulations, 7 CFR 1.14) and addressed as follows:

Administrator, Food Safety and Inspection
Service (FOIA Appeals), Department of
Agriculture, Washington, DC 20250-3700

(b) The FSIS Administrator is authorized under 7 CFR 1.3(a)(4) to extend the 20-day deadline, make discretionary releases, and make determinations regarding the charging of fees.

9. Section 390.8 is revised to read as follows:

§ 390.8 Agency response to requests.

(a) The response to Freedom of Information requests and appeals by officials named in §§ 390.5 and 390.7 of this part shall be governed by and made in accordance with 7 CFR 1.7 and the regulations in this part.

(b) If requests for records and information are received by field offices, the field office will immediately notify the FOIA Coordinator or designee by telephone and transmit the request to the FOIA office. In rare instances, the FOIA Coordinator or designee will authorize a release of the requested records to the field office receiving the request. The request will be considered as having been received on the date of arrival in the office of the Coordinator or designee. Any person whose request for records has been granted may inspect and copy the records (or copies) at the office listed in § 390.4 of this part in accordance with the provisions of that section and with § 390.6. Copies also may be obtained by mail.

Done in Washington, DC, on August 4, 1999.

Thomas J. Billy,
Administrator.

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