



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS-FV-14-0069; FV-14-989-2 PR]

Raisins Produced from Grapes Grown in California; Proposed Amendments to Marketing Order 989 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rule proposes two amendments to Marketing Order No. 989 (order), which regulates the handling of raisins produced from grapes grown in California and provides producers with the opportunity to vote in a referendum to determine if they favor the changes. These amendments were proposed by the Raisin Administrative Committee (Committee), which is responsible for the local administration of the order and is comprised of producers and handlers of raisins operating within the production area. These proposed amendments are intended to improve administration of the order and reflect current industry practices.

DATES: The referendum will be conducted from March 9, 2016, through March 23, 2016. The representative period for the

purpose of the referendum is August 1, 2014, through July 31, 2015.

ADDRESSES: Marketing Order and Agreement Division,
Specialty Crops Program, AMS, USDA, 1400 Independence
Avenue SW, Stop 0237, Washington, DC 20250-0237.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones,
Marketing Specialist, or Michelle P. Sharrow, Rulemaking
Branch Chief, Marketing Order and Agreement Division,
Specialty Crops Program, AMS, USDA, 1400 Independence
Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone:
(202) 720-2491, Fax: (202) 720-8938, or E-mail:
Geronimo.Quinones@ams.usda.gov or
Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on complying
with this regulation by contacting Antoinette Carter,
Marketing Order and Agreement Division, Specialty Crops
Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Antoinette.carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under
Marketing Order No. 989, as amended (7 CFR part 989),
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 Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal 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. Such 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 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.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposals are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the order.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on October 2, 2014.

A proposed rule soliciting comments on the proposed amendments was issued on October 15, 2015, and published in the **Federal Register** on October 16, 2015 (80 FR 62506). Two comments were received. One comment was in support of the amendments. The second comment asked questions about one of the proposals. These comments will be addressed later in this document. AMS will conduct a producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers in the referendum.

The Committee's proposed amendments would amend the order by: (1) Authorizing the Committee to borrow from a commercial lending institution during times of cash shortage to help ensure continuity of operations during the first half of the year before assessment income is received, and (2) Establishing a monetary reserve equal to one year's budgeted expenses.

Proposal #1 - Borrowing from a Commercial Lending

Institution

Section 989.80 of the order, Assessments, authorizes the Committee to collect assessments from handlers to administer the program.

This proposal would provide the Committee with authority to borrow from a commercial lending institution during times of cash shortages. Since inception of the marketing order, the Committee has occasionally used the order's volume regulation provisions to pool a portion of the annual raisin crop to assure orderly marketing. These pooled raisins, designated by the Committee as reserve raisins, were sold and released to handlers throughout the crop year. In managing the pooled raisins for the best return to growers, the Committee pooled the cash received from the handlers until equity payments were distributed to the growers. The Committee borrowed funds (with interest) from this reserve raisin pool during times of assessment shortages to temporarily cover expenses, generally during the early part of the new crop year.

Volume regulation has not been in effect under the marketing order since 2010, and the Committee has been

returning equity payments to the growers who contributed raisins to the 2009 reserve raisin pool. Therefore, funds from the reserve raisin pool are no longer available for the Committee to use during times of cash shortages. The Committee's proposed amendment to the order would allow it to borrow from a commercial lending institution when no other funding is available. This would assist the Committee in bridging finances from the end of one fiscal year through the first quarter of the new fiscal year, before assessments on the new crop are received.

Additionally, the Committee has received grants from the Foreign Agricultural Service's (FAS) Market Access Program (MAP) since 1995 to conduct market expansion and development activities in various international markets. Under MAP, participants must first use their own resources for activities and request reimbursement from FAS. Sometimes there is a time-lag between submission of reimbursement requests and receipt of payments, which causes budgeting issues. Having authority to borrow from a commercial lending institution would help to ensure continuity of operations when this occurs.

Therefore, for the reasons stated above, it is proposed that § 989.80, Assessments, be amended by adding a sentence in paragraph (c) that would provide the Committee with authority to borrow from a commercial lending institution.

Proposal #2 - Establish a Monetary Reserve Fund Equal to One Year's Budgeted Expenses

Section 989.81 of the order, Accounting, authorizes the Committee to credit or refund unexpended assessment funds from the crop year back to the handlers from whom they were collected. Currently, the order doesn't allow the Committee to retain handler assessments from prior crop years.

This proposal would allow the Committee to establish a monetary reserve equal to one year's operational expenses as averaged over the past six years. Reserve funds could be used for specific administrative and overhead expenses such as staff wages, salaries and related benefits, office rent, utilities, postage, insurance, legal expenses, and audit costs; to cover deficits incurred during any period when assessment income is less than expenses; to defray expenses incurred during any period when any or all

provisions of the order are suspended; liquidation of the order; and other expenses recommended by the Committee and approved by the Secretary. Reserve funds could not be used for promotional expenses during any crop year prior to the time that assessment income is sufficient to cover such expenses.

As previously stated in Proposal #1, the Committee borrowed cash from the reserve raisin pool and repaid it with interest when handler assessment cash shortages occurred in the past. This practice helped the Committee to bridge finances from one fiscal crop year to the next until assessment income for the new crop year was received. This option is no longer available.

For the reasons stated above, it is proposed that § 989.81, Accounting, be amended to allow the Committee to retain excess assessment funds for the purpose of establishing a monetary reserve equal to one year's budgeted expenses as averaged over the past six years. Such excess funds could only be used for specific administrative and operational expenses as outlined in the order.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 businesses 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.

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

Based upon 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.

The amendments proposed by the Committee would authorize the Committee to borrow from commercial lending institutions and to establish a monetary reserve fund equal to one year's budgeted expenses. This would help to ensure proper management and funding of the program.

The Committee reviewed and identified a yearly budget that would be necessary to continue program operations in the absence of a reserve pool. Based on this budget, the Committee believes a monetary reserve of approximately \$2 million would be sufficient to continue operations. The anticipated \$2 million to be accumulated in a monetary reserve would not be accrued in one crop year. It would be spread over several years, depending on expenses, assessment revenue, and excess handler assessments accrued in each crop year. For example: If excess annual handler assessments amount to \$400,000, it would take five years to accrue \$2 million. Currently, the average excess handler assessments paid yearly over the last six years has been

\$861,622. During the time in which the monetary reserve fund would be accumulated, the Committee would seek funding from a commercial lending institution as previously explained in Proposal #1.

While this action would result in a temporary increase in handler costs, these costs would be uniform on all handlers and proportional to the size of their businesses. However, these costs are expected to be offset by the benefits derived from operation of the order. Additionally, these costs would help to ensure that the Committee has sufficient funds to meet its financial obligations. Such stability is expected to allow the Committee to conduct programs that would benefit all entities, regardless of size. California raisin producers should see an improved business environment and a more sustainable business model because of the improved business efficiency.

Alternatives were considered to these proposals, including making no changes at this time. However, the Committee believes it would be beneficial to have the means and funds necessary to effectively administer the program.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, "Vegetable and Specialty Crops." No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

These proposed amendments would impose no additional reporting or recordkeeping requirements on either small or large California 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. In addition, 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.

The Committee's meeting was widely publicized throughout the California raisin production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the October 2, 2014, meeting was public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on October 16, 2015 (80 FR 62506). Copies of the rule were mailed or sent via facsimile to all Committee members. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 15,

2015, was provided to allow interested persons to respond to the proposal.

Two comments were received. One comment was in support of the proposal. The second comment stated that the term "commercial lending institution" is vague and asked for the name of the institution and clarification regarding what constitutes a shortage. The comment also stated that the lending arrangement should be discussed openly. To clarify, as used in this proposal, a shortage would exist when the Committee's cash flow needs exceed the amount of cash available from handler assessments. Regarding open discussion, the Committee establishes a budget and assessment rate annually in meetings that are open to the public. During these meetings, the Committee would discuss any shortages and any available commercial lending opportunities. No changes have been made to the proposed amendments as a result of the comments received.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the October 16, 2015, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Raisins Produced from Grapes Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400-407) to determine whether the annexed order amending the order regulating the handling of Raisins Produced from Grapes Grown in California is approved by growers, as defined under the terms of the order, who during a representative period were engaged in the production of raisins in the production area. The representative period for the conduct of such referendum is hereby determined to be August 1, 2014, through July 31, 2015.

The agents of the Secretary to conduct such referendum are designated to be Maria Stobbe and Andrea Ricci,

California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, or E-mail: Maria.Stobbe@ams.usda.gov or Andrea.Ricci@ams.usda.gov, respectively.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

Dated: February 26, 2016

Elanor Starmer
Acting Administrator
Agricultural Marketing Service

BILLING CODE 3410-02 P

**Order Amending the Order Regulating the Handling of Raisins
Produced from Grapes Grown in California ¹**

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of raisins produced from grapes grown in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

¹This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

3. The marketing order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of raisins produced in the production area; and

5. All handling of raisins produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of raisins produced from grapes grown in California shall be in conformity to,

and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on October 15, 2015, and published in the **Federal Register** (80 FR 62506) on October 16, 2015, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

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. Revise paragraph (c) of § 989.80 to read as follows:

§ 989.80 Assessments.

* * * * *

(c) During any crop year or any portion of a crop year for which volume percentages are not effective for a varietal type, all standard raisins of that varietal type acquired by handlers during such period shall be free tonnage for purposes of levying assessments pursuant to this section. The Secretary shall fix the rate of

assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. In the event cash flow needs of the committee are above cash available generated by handler assessments, the committee may borrow from a commercial lending institution. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

3. Revise paragraph (a) of § 989.81 to read as follows:

§ 989.81 Accounting.

(a) If, at the end of the crop year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom collected in accordance with § 989.80; Provided, That any sum paid by a person in excess of his or her pro rata share of expenses during any crop year may be applied by the committee at the end of such crop year as credit for such person, toward the committee's administrative operations for the following crop year; Provided further, That the committee may credit the excess to any outstanding obligations due the committee from such person.

(2) The committee may carry over such excess funds into subsequent crop years as a reserve; Provided, That funds already in the reserve do not exceed one crop year's budgeted expenses as averaged over the past six years. In

the event that funds exceed one crop year's expenses, funds in excess of one crop year's budgeted expenses shall be distributed in accordance with paragraph (1) above. Such funds may be used:

(i) To defray essential administrative expenses (i.e., staff wages/salaries and related benefits, office rent, utilities, postage, insurance, legal expenses, audit costs, consulting, website operation and maintenance, office supplies, repairs and maintenance, equipment leases, domestic staff travel and committee mileage reimbursement, international committee travel, international staff travel, bank charges, computer software and programming, costs of compliance activities, and other similar essential administrative expenses) exclusive of promotional expenses during any crop year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any period when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;

(iv) To meet any other such expenses recommended by the committee and approved by the Secretary; and

(v) To cover the necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate; Provided, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

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