



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

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

**Raisins Produced from Grapes Grown in California; Order
Amending Marketing Order 989**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 989 (order), which regulates the handling of raisins produced from grapes grown in California. The amendments approved by producers in the referendum were proposed by the Raisin Administrative Committee (Committee) which is comprised of producers and handlers of raisins and responsible for the local administration of the order. The changes will allow the Committee to borrow from a commercial lending institution and authorize the establishment of a monetary reserve equal to up to one year's budgeted expenses. Allowing the Committee to utilize these customary business practices will help improve administration of the order.

DATES: This rule is effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 rule is issued under
Marketing Agreement and Order No. 989, both 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
applicable rules of practice and procedure governing the

formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering raisins produced in California.

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 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 amendment of section 18c(17) of the Act and 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 considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the order as proposed by the

Committee could appropriately be accomplished through informal rulemaking.

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 13, 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, which were addressed in the proposed rule and referendum order which was issued on February 22, 2016, and published in the **Federal Register** on March 7, 2016 (81 FR 11678). This document also directed that a referendum among raisin producers be conducted during the period of March 9, 2016 through March 23, 2016, to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of raisins represented by voters in the referendum. Both of the amendments were passed by 94 percent of the producers voting and by 93 percent of the

volume represented, which exceeds the required two-thirds approval of the producers voting in the referendum or two-thirds of the volume represented in the referendum.

The amendments included in this final rule will authorize the Committee to: (1) Borrow from a commercial lending institution; and (2) Establish a monetary reserve fund equal to up to one year's fiscal expenses.

Final Regulatory Flexibility Analysis

Pursuant to 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 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.

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 \$7,500,000 (13 CFR 121.201). Based upon information provided by the Committee, it may be concluded that a majority of producers and approximately 18 California raisin handlers may be classified as small entities.

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

The Committee's proposed amendments were unanimously recommended at a public meeting on October 2, 2014.

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 will be sufficient to continue operations. The anticipated \$2 million to be accumulated in a monetary

reserve will not be accrued in one crop year. It will 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 will seek funding from a commercial lending institution.

While this action will result in a temporary increase in handler costs, these costs will 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 will 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 will 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 is beneficial to have the means and funds necessary to effectively administer the program.

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 amendments will not impose any 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 and raisin handlers. 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 proposals. 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 the 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 were made to the proposed amendments as a result of the comments received.

A proposed rule and referendum order was then issued on February 22, 2016, and published in the **Federal Register** on March 7, 2016 (81 FR 11678). This document directed that a referendum among raisin producers be conducted during the period of March 9, 2016, through March 23, 2016, to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to

be approved by at least two-thirds of the producers voting, or two-thirds of the volume of raisins represented by voters in the referendum. Both of the amendments were passed by 94 percent of the producers voting and by 93 percent of the volume represented, which exceeds the required two-thirds approval of the producers voting in the referendum or two-thirds of the volume represented in the referendum.

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/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

- (a) Findings and Determinations Upon the Basis of the Rulemaking Record.

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 all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

3. The marketing order, as 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, prescribes, 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 or packed 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.

(b) Additional Findings.

It is necessary and in the public interest to make these amendments effective not later than one day after publication in the Federal Register. A later effective date would unnecessarily delay implementation of the amendments. These amendments should be in place as soon as possible so the Committee may begin the process of identifying a commercial lending institution if cash flow shortages are identified during their annual budget meeting which will occur prior to the start of their next crop year (August 1, 2016). In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the Federal Register and that it would be contrary to the public interest to delay the effective date for 30 days

after publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551-559.)

(c) Determinations. It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of raisins covered under the order) who during the period August 1, 2014, through July 31, 2015, handled not less than 50 percent of the volume of such raisins covered by said order, as hereby amended, have signed an amended marketing agreement; and

2. The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of August 31, 2014, through July 31, 2015, have been engaged within the production area in the production of such raisins, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order together with a signed marketing agreement advances the interests of

growers of raisins in the production area pursuant to the declared policy of the Act.

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 amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Associate Administrator on October 13, 2015, and published in the **Federal Register** on October 16, 2015 (80 FR 62506), shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, 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. 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 (a) (1) of this section. 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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Dated: July 5, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
[FR Doc. 2016-16335 Filed: 7/8/2016 8:45 am; Publication Date: 7/11/2016]