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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV02-989-7 FR]

#### Raisins Produced From Grapes Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2002-03 and subsequent crop years from \$6.50 to \$8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** January 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237;

telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, 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 Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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.

This rule increases the assessment rate established for the Committee for the 2002-03 and subsequent crop years from \$6.50 to \$8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The order authorizes volume control provisions that establish free and reserve percentages for raisins acquired by handlers. Free tonnage raisins may be sold by handlers to any outlet, and reserve tonnage raisins are held by handlers for the account of the Committee or released or sold to handlers for sale to free tonnage outlets. Reserve raisins held for the account of the Committee are not assessable. With projected assessable tonnage about 81,000 tons less than last year's assessable tonnage, sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. This action was recommended by the Committee at a meeting on July 24, 2002.

Sections 989.79 and 989.80, respectively, of the order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

A continuous assessment rate of \$6.50 per ton has been in effect since the 2000-01 crop year. For the 2002-03 crop year, the Committee recommended increasing the assessment rate to \$8.00 per ton of assessable raisins to cover recommended administrative expenditures of \$1,912,000. This compares to budgeted expenses of \$2,080,000 for the 2001-02 crop year. Major expenditures include \$663,000 for export program administration and related activities, \$500,000 for salaries, \$164,800 for contingencies, and

\$160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were \$662,500, \$500,000, \$303,500, and \$220,000, respectively.

The recommended \$8.00 per ton assessment rate was derived by dividing the \$1,912,000 in anticipated expenses by an estimated 239,000 tons of assessable raisins. The Committee recommended increasing its assessment rate because the projected 2002–03 assessable tonnage of 239,000 tons is 81,000 tons lower than last year's assessable tonnage. Sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining seven handlers have sales less than \$5,000,000. No more than seven handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from \$6.50 to \$8.00 per ton of assessable raisins acquired by handlers. The Committee recommended 2002–03 expenditures of \$1,912,000. Major expenditures include \$663,000 for export program administration and related activities, \$500,000 for salaries, \$164,800 for contingencies, and \$160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were \$662,500, \$500,000, \$303,500, and \$220,000, respectively. With anticipated assessable tonnage at 239,000 tons, about 81,000 tons lower than last year's assessable tonnage, sufficient income should be generated at the \$8.00 per ton assessment rate to meet expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The industry considered various alternative assessment rates prior to arriving at the \$8.00 per ton recommendation. The Committee's Audit Subcommittee met on July 24, 2002, to review preliminary budget information. The subcommittee was aware that the full Committee would be meeting later that day to consider actions that would impact the 2002 free tonnage percentage and, thus, the quantity of 2002 assessable tonnage. The Audit Subcommittee considered assessment rates of \$7.50 and \$8.00 per ton based on varying levels of assessable tonnage. Ultimately, the full Committee adopted the subcommittee's recommendation of \$8.00 per ton based on 239,000 tons of assessable tonnage.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently

been less than one percent of grower revenue in recent years. Although no official estimates or data are available for the upcoming season, it is anticipated that assessment revenue will likely continue to be less than one percent of grower revenue in the 2002–03 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

Additionally, the Audit Subcommittee and full Committee meetings held on July 24, 2002, where this action was deliberated were public meetings widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on November 21, 2002 (67 FR 70182). Copies of the proposed rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition the rule was made available through the Internet by the Office of the Federal Register and USDA. A 10-day comment period ending December 2, 2002, was provided for interested persons to respond to the proposal.

One comment was received opposing the proposed increase in the assessment rate. The commenter stated that the estimate of assessable tonnage used by the Committee was artificially low, improperly justifying a higher assessment rate. The commenter argued that issuance of the proposed assessment rate at this time would be arbitrary, capricious, and not in

accordance with law because there is no field price for raisins and USDA has not approved the Raisin Administrative Committee's recommendation for free and reserve tonnage. The commenter also suggests that last year's assessment rate could be retained by simply increasing the amount of assessable tonnage by 81,000 tons.

We disagree with the commenter. The issuance of this rule is consistent with the order provisions that authorize assessments. The Committee derived the \$8.00 per ton assessment rate only after determining the level of necessary and appropriate administrative expenses, and dividing total administrative expenses by assessable tonnage. If later estimates indicate that the actual assessable tonnage is sufficiently greater than that projected by the Committee on July 24, 2002, the Committee could recommend that the assessment rate be reduced. Upon approval by the Secretary, this lower rate would be applied to all assessable 2002-03 crop year raisins. In either case, the assessment revenue collected from handlers would be used to fund the Committee's approved administrative expenses in accordance with §§ 989.79 and 989.80.

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comment received, 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.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2002-03 raisin crop from growers; (2) the crop year began on August 1, 2002, and the assessment rate applies to all raisins received during the 2002-03 and subsequent seasons; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 10-day comment period was provided for in the proposed rule and the comment received was

considered by USDA in reaching a decision on this matter.

#### 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. Section 989.347 is revised to read as follows:

#### **§ 989.347 Assessment rate.**

On and after August 1, 2002, an assessment rate of \$8.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: January 6, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-455 Filed 1-6-03; 4:34 pm]

**BILLING CODE 3410-02-P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Parts 996, 997, 998, and 999**

[Docket No. FV02-996-1 FIR]

#### **Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule establishing a new part 996 which requires all domestic and imported peanuts marketed in the United States to be officially inspected. This action is mandated by the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. This rule continues handling standards that handlers and importers must follow and edible quality standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against

peanut quality concerns are also specified. This rule also finalizes the termination of the Peanut Marketing Agreement No. 146 (Agreement) and the rules and regulations issued under the Agreement, and the termination of companion regulations that applied to imported peanuts and peanuts handled by persons not subject to the Agreement. **DATES:** The changes to the interim rule of September 9, 2002 (67 FR 57129), are effective January 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A38, Unit 155, Riverdale, Maryland 20737; telephone (301) 734-5243, Fax: (301) 734-5275 or Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; telephone (202) 720-2491, Fax: (202) 720-8938; or E-mail: [james.wendland@usda.gov](mailto:james.wendland@usda.gov), [kenneth.johnson@usda.gov](mailto:kenneth.johnson@usda.gov) or [ronald.cioffi@usda.gov](mailto:ronald.cioffi@usda.gov).

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same DC address as above, or E-mail: [jay.guerber@usda.gov](mailto:jay.guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), 7 U.S.C. 7958, hereinafter referred to as the "Act."

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB) and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Prior documents in this proceeding are: an interim final rule published in the **Federal Register**, (67 FR 57129, September 9, 2002) and a correction (67 FR 63503, October 11, 2002).

#### **Termination of the Peanut Marketing Agreement and the Peanut Non-signer and Import Regulations**

This rule finalizes termination of Peanut Marketing Agreement No. 146 (7