



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**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites public comments on proposed amendments to Marketing Order No. 989, which regulates the handling of raisins produced from grapes grown in California. 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, recommended the amendments that would authorize 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 would help to improve administration of the order.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public.

Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Fruit and Vegetable 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 Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@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 rule 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. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the "Initial Regulatory Flexibility Analysis" section of this rule.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on October 2, 2014. Currently, the order does not allow the Committee to borrow funds from a commercial lending institution or retain unspent handler assessments past the close of a fiscal year. Allowing the Committee to utilize these customary business practices would help to improve administration of the order by providing it with the means for ensuring continuity of operations when its cash flow needs are greater than available handler assessment income.

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 sometimes has 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 when no other funding is available.

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 it was 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.

Initial 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 initial 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 proposed rule 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.

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.

This proposed rule 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.

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. Finally, interested persons are invited to submit comments on the proposed amendments to the order, including comments on the regulatory and informational impacts of this action on small businesses.

Following analysis of any comments received on the amendments proposed in this rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and referendum order would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the Federal Register. A final rule would then be issued to

effectuate any amendments favored by producers participating in the referendum.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action. 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 Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

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 hereby proposed to be amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order as hereby proposed to be amended regulates the handling of raisins produced by grapes grown in California 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 hereby proposed to be 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 hereby proposed to be 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 or packed 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.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on the amendments proposed in this rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

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 proposed to be amended as follows:

PART 989 - RAISINS PRODUCED BY 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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Dated: October 13, 2015

Rex Barnes
Associate Administrator
Agricultural Marketing Service

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