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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS-FV-15-0032; FV15-989-2 FR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Raisin Administrative Committee (committee) for an increase of the assessment rate established for the 2015-16 and subsequent crop years from $14.00 to $17.00 per ton of California raisins handled under the marketing order (order). The committee locally administers the order, and is comprised of producers and handlers of raisins operating within the area of production. Assessments upon raisin handlers are used by the committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective November 27, 2015.

FOR FURTHER INFORMATION CONTACT: Maria Stobbe, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: Maria.Stobbe@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, 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: Jeffrey.Smutny@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 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. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins beginning on August 1, 2015, and continue until amended, suspended, or terminated.

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 by the committee for the 2015-16 and subsequent crop years from $14.00 to $17.00 per ton of California raisins handled.

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 to 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 costs for 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.

For the 2010-11 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 11, 2015, and recommended an assessment rate increase from $14.00 per ton to $17.00 per ton by a unanimous vote. At this meeting, the committee also recommended a budget for the 2015-16 crop year, with recommended expenses and contingency reserve totaling $5,832,496. The vote on this recommendation was also unanimous. The assessment rate of $17.00 per ton is expected to generate assessment income of $5,832,496, which should be sufficient to fund the 2015-16 expenses.

As previously stated, the committee's budget for the 2015-16 crop year is $5,832,496, and the assessment rate is $17.00 per ton, which is $3.00 per ton higher than the rate currently in effect.

The major expenditures recommended by the committee for the 2015-16 crop year include: salaries and employee-related costs of $1,402,906; administration costs of $610,000; compliance activities costs of $30,000; research and studies costs of $129,000; operation and maintenance costs of the generic marketing programs of $3,520,178; and a contingency of $355,503. Subtracted from these expenses is $215,091, which represents reimbursable costs for the shared management of the State marketing program.

In comparison, last year's approved budgeted expenditures included: salaries and employee-related costs of $1,337,100; administration costs of $493,500; compliance activities costs of $30,000; research and studies costs of $85,000; operation and maintenance costs of the generic marketing programs of $3,296,800; and a contingency of $100,000. Reimbursable costs for the shared management of the State marketing program of $166,860 were subtracted, resulting in a total approved budget for the 2014-15 crop year of $5,175,540.

The committee believes that more funds should be spent in promoting raisins internationally, including China. For that reason, budgeted expenses in those endeavors have been increased: research and studies costs increased from $85,000 for the 2014-15 crop year to $129,000 for the 2015-16 crop year; and operation and maintenance costs of generic marketing programs increased from $3,296,800 for the 2014-15 crop year to $3,520,178 for the 2015-16 crop year. In addition, the committee included a contingency fund for unexpected expenses and opportunities that may occur during the year.

The quantity of assessable raisins for 2015-16 crop year was estimated to be 343,088 tons. At the assessment rate of $17.00 per ton, the anticipated assessment income would be $5,832,496. 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 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 2015-16 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) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 the 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 20 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts 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 shipment data and other 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.

This rule increases the assessment rate established for the committee and collected from handlers for the 2015-16 and subsequent crop years from $14.00 to $17.00 per ton of assessable raisins acquired by handlers.

The committee reviewed and identified the expenses that are reasonable and necessary to continue program operations during the 2015-16 crop year. The resulting recommended budget totals $5,832,496 for the 2015-16 crop year. This represents an overall increase from the 2014-15 budget, which totaled $5,175,540. The 2015-16 budget includes additional expenditures to fund increased promotional programs in export markets, and a contingency fund of $355,503, which provides a safety net to cover unexpected expenses and opportunities that present themselves during the 2015-16 crop year.

The quantity of assessable raisins for 2015-16 crop year was estimated to be 343,088 tons. At the assessment rate of $17.00 per ton, the anticipated assessment income would be $5,832,496. Sufficient income should be generated at the higher assessment rate for the committee to meet its anticipated expenses.

The major expenditures recommended by the committee for the 2015-16 crop year include: salaries and employee-related costs of $1,402,906; administration costs of $610,000; compliance activities costs of $30,000; research costs of $129,000; operation and maintenance costs of generic marketing programs of $3,520,178; and a contingency of $355,503.

In comparison, last year's approved budgeted expenditures included: salaries and employee-related costs of $1,337,100; administration costs of $493,500; compliance activities costs of $30,000; research costs of $85,000;

operation and maintenance costs of generic marketing programs of $3,296,800; and a contingency of $100,000. The total budget approved for the 2014-15 crop year was $5,175,540.

The committee believes that more funds should be spent in promoting raisins internationally, including China. For that reason, expenses for research and promotion activities have been increased: operation and maintenance costs of generic marketing programs increased from $3,296,800 for the 2014-15 crop year to $3,520,178 for the 2015-16 crop year, and research costs have increased from $85,000 for the 2014-15 crop year to $129,000 for the 2015-16 crop year. In order to fund these additional expenditures, the committee recommended an increased assessment rate.

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.

Prior to arriving at this budget and assessment rate, the committee considered information from various sources, such as the committee's Audit and Marketing Subcommittees. Alternative spending levels were discussed by the Marketing and Audit Subcommittees, which met on June 8, 2015 and June 11, 2015, to review the committee's financial operations.

The committee ultimately decided that the recommended budget and assessment rate were reasonable and necessary to properly administer the order.

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. With a $17.00 assessment rate, assessment revenue is expected to remain at less than one percent of grower revenue.

Regarding the impact of this action on affected entities, this action increases the assessment obligation imposed on handlers. While increased assessments impose additional costs on handlers regulated under the order, the rates are uniform on all handlers, and proportional to the size of their businesses. It is expected that these costs would be offset by the benefits derived from the operation of the order.

In addition, the meetings of the Audit and Marketing Subcommittees, and the full committee were widely publicized throughout the California raisin industry, and all interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all subcommittee and committee meetings, the June 8, 2015 and June 11, 2015, meetings were public meetings, and all entities, both large and small, were able to express views on this issue.

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 are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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.

A proposed rule concerning this action was published in the **Federal Register** on September 2, 2015 (80 FR 53022). Copies of the proposed rule were mailed or sent via facsimile or e-mail to all raisin handlers. Finally, the proposal was made available through the Internet by USDA and the office of the Federal Register. A 30-day comment period ending October 2, 2015, was provided for interested persons to respond to the proposal. Five comments were received: four in support of the proposed rule and one opposed. The commenter in opposition questioned the use of funds for more committee travel and expressed concern that past trips have not increased sales. The commenter is also concerned that the increase would be at the expense of producers. This action increases the assessment obligation imposed on handlers. While some of these additional costs may be passed on to producers, the committee, which is comprised of producers and handlers, unanimously voted to increase the assessment rate. It is expected that the increase in costs would be offset by the benefits derived by the industry, as a whole. Accordingly, no change will be made to the rule as proposed.

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/rulesregulations/moa/small-businesses. Any questions about the compliance guide should be sent to Jeffrey Smutny 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 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 is 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 handlers are already receiving 2015-16 raisin crop from growers, and the crop year began on August 1, 2015, and the marketing order requires that the assessment rate applies to all assessable raisins received during the 2015-16 and subsequent seasons. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

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, 2015, an assessment rate of $17.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: November 20, 2015.

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Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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