



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS-SC-18-0069; SC18-989-1 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) to increase the assessment rate established for the 2018-19 and subsequent crop years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Terry Vawter, Acting 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 Email: Kathie.Notoro@usda.gov or Terry.Vawter@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, 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 Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. Part 989 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of raisins operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the

Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 is applicable to all assessable raisins for the 2018-19 crop year, 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.

The Order provides 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 are familiar with the Committee's needs and with the costs of goods and services in their local area, and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

This rule increases the assessment rate from \$17.00 to \$22.00 per ton of raisins for the 2018-19 and subsequent crop years. The current rate was published in the *Federal Register* during the 2015-16 crop year and was designed to reduce the Committee's monetary reserve to a level that is appropriate under the Order. The higher rate is a result of a smaller crop forecast due to early spring rain damage to the vines. The 2018-19 crop is anticipated to be 275,000 tons, down from the 300,000 tons recorded the previous crop year.

The Committee met on June 27, 2018 and unanimously recommended 2018-19 expenditures of \$5,189,600 and an assessment rate of \$22.00 per ton of raisins. The major expenditures recommended by the Committee for the 2018-19 crop year include salaries and employee-related costs of \$1,187,200; administration costs of \$440,400; compliance activities of \$60,000; research and study costs of \$40,000; and promotion related costs of \$3,637,000. Subtracted from these expenses is \$175,000, which represents reimbursable costs for the shared management of the State marketing raisin program. Budgeted expenditures for these items in 2017-18 were \$1,306,150; \$505,600; \$48,000; \$35,000; and \$3,577,178, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of 275,000 tons, and the amount of funds available in the authorized reserve. Income derived from handler assessments calculated at \$6,050,000 (275,000 x \$22.00), should be adequate to cover budgeted expenses of \$5,189,600. The remaining \$860,400 would be added to the Committee's authorized reserve.

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 2018-19 budget and those for subsequent crop years will 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 2,600 producers of California raisins and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000. (13 CFR 121.201.)

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2017) shows that about 8.03 tons of raisins were produced per acre. The 2017 producer price published by NASS was \$1,670 per ton. Thus, the value of raisin production per acre averaged about \$13,410.10 (8.03 tons times \$1,670 per ton). At that average price, a producer would have to farm nearly 56 acres to receive an annual income from raisins of \$750,000 (\$750,000 divided by \$13,410.10 per acre equals 55.93 acres). According to the Committee, the majority of California raisin producers farm less than 56 acres.

In addition, according to data from the Committee, six of the sixteen California raisin handlers have receipts of less than \$7,500,000 and may also be considered small entities. Thus, the majority of producers of California raisins may be classified as small entities, while the majority of handlers may be classified as large entities.

This rule increases the assessment rate collected from handlers for the 2018-19 and subsequent crop years from \$17.00 to \$22.00 per ton of assessable raisins acquired by handlers. The Committee unanimously recommended 2018-19 expenditures of \$5,189,600 and an assessment rate of \$22.00 per ton of assessable raisins. The assessment rate of \$22.00 is \$5.00 higher than the rate currently in effect. The quantity of assessable raisins for the 2018-19 crop year is estimated at 275,000 tons. Thus, the \$22.00 rate should provide \$6,050,000 in assessment income ($275,000 \times \$22.00$). Income derived from handler assessments, should be adequate to cover budgeted expenses. The remaining \$860,400 would be added to the Committee's authorized reserve.

The major expenditures recommended by the Committee for the 2018-19 crop year include: Salaries and employee-related costs of \$1,187,200; administration costs of \$440,400; compliance activities of \$60,000; research and

study costs of \$40,000; and promotion related costs of \$3,637,000. Budgeted expenditures for these items in 2017-18 were \$1,306,150; \$505,600; \$48,000; \$35,000; and \$3,577,178, respectively. The total budget approved for the 2017-18 crop year was \$5,296,928.

The increased assessment rate is necessary to cover the decrease in estimated crop size tonnage from 300,000 tons in 2017-18 to 275,000 tons in 2018-19 while also helping to maintain the Committee's activities at current levels avoiding a reduction in the program's effectiveness, and keeping the monetary reserve to a level that is appropriate under the Order.

Prior to arriving at this budget and assessment rate, the Committee considered information from the Audit Subcommittee which met on June 13, 2018, and discussed alternative spending levels. The recommendation was discussed by the Committee on June 27, 2018, and the Committee ultimately decided that the recommended budget and assessment rate were reasonable and necessary to properly administer the Order.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2017-18 crop year was approximately \$1,670.00 per ton of raisins. Utilizing that price, the

estimated crop size of 275,000 tons, and the assessment rate of \$22.00 per ton, the estimated assessment revenue for the 2018-19 crop year as a percentage of total producer revenue is approximately 0.013 percent (assessment revenue of \$6,050,000 divided by total producer revenue \$459,250,000).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the Order.

The meetings of the Audit Subcommittee and the Committee were widely publicized throughout the California raisin industry. 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 13, 2018, and June 27, 2018, meetings, respectively, 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 OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops.

No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does 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. 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 October 23, 2018 (83 FR 53402). Copies of the proposed rule were provided to all raisin handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending November 23, 2018, was provided for interested persons to respond to the proposal.

No comments were received. Accordingly, no changes 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower 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.

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, 2018, an assessment rate of \$22.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: January 31, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2019-01139 Filed: 2/5/2019 8:45 am; Publication Date: 2/6/2019]