

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV02-989-7 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by December 2, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during

regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**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 proposed herein would 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 would increase 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 proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would 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.

### Initial 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 initial 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 would increase 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 would be 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 are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because a final decision on increasing the rate as proposed should be made by mid-November. This is when the Committee is anticipated to begin billing handlers for assessments.

#### 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 proposed to be 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: November 14, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–29600 Filed 11–18–02; 4:50 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 1, 60, 61, 63, 141, and 142

[Docket No. FAA–2002–12461; Notice No. 02–11]

RIN 2120–AH07

#### Flight Simulation Device Initial and Continuing Qualification and Use

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of on-line public forum.

**SUMMARY:** On September 25, 2002, the FAA published a notice of proposed rulemaking (NPRM), which proposes requirements to establish flight simulation device qualification requirements in a new part. (67 FR

60284; Notice No. 02–11). The comment period closes on February 24, 2003. To supplement the traditional comment period, we are announcing an on-line public forum, allowing you to answer specific questions we will ask on the Internet. We are offering the forum to assist us in providing a clear and comprehensive final rule. You can continue to submit comments to the docket during the public forum, as outlined below and in the NPRM.

**DATES:** You may access the on-line public forum beginning December 2, 2002, at 9 a.m. e.s.t. until December 13, 2002, at 4:30 p.m. e.s.t.

**ADDRESSES:** You may access the on-line public forum at <http://www2.faa.gov/avr/arm/rulemakingforum.cfm?nav=part>. Under the “View Docket/Comments” column, click once on “Enter Public Forum.” Follow the instructions to access the questions.

If you are unable to participate in the on-line public forum and wish to submit written comments, address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12461 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Edward Cook, National Simulator Program Staff (AFS–205), Flight Standards Service, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6100.

#### SUPPLEMENTARY INFORMATION

##### On-Line Public Forum

We are soliciting on-line discussion and written comments on the questions below. You will be able to read the questions on-line and submit your answers and comments electronically. We will monitor your responses throughout the 2-week forum and may ask you clarifying questions. While we have selected topics that we are

particularly interested in, we still welcome all of your comments and suggestions. We will not make any commitments or draw any conclusions while the docket is open for public comment.

#### On-Line Questions

The questions that will appear on the Internet for the on-line public forum are as follows:

1. The FAA would like to assist any reader who may have had difficulty understanding the proposed rule. If you need clarification on the proposed rule (in general or in a specific section), please describe what you would like clarified here.

**Note:** We will exert every effort to post our reply below your description in as short a time as possible.

2. The FAA seeks the public’s opinion on the format of the part 60 appendices “A” through “D.” Specifically, does this format aid the reader in determining the context of the material being read (*i.e.*, awareness that the text is rule language, additional requirements, or information)? If not, what are your recommendations for modifying the format?

3. The FAA seeks the public’s recommendations for additions, modifications, and/or deletions to the definitions of terms used in the proposed rule (as found in the dedicated section of the rule and the dedicated attachment in each appendix to the rule). The recommendations we are seeking are strictly to make the proposed rule clearer.

4. The FAA seeks the public’s opinion on where the National Simulator Program (NSP) should publish the Statement of Qualification?\* The options are as follows:

(a) Shared with the public on the NSP’s Internet website;

(b) Shared only among NSP staff, FAA personnel (for example, Principal Operations Inspector (POI) or Training Center Program Manager (TCPM)) and the sponsor; or

(c) Shared only between NSP staff and the sponsor.

\* **Note:** The Statement of Qualification consists of the following three parts:

(a) *A Certificate*—names the sponsor; the aircraft being simulated; the category of Flight Simulation Device (FSD); the FAA identification number; and the qualification level for the device.

(b) *A Configuration List*—outlines the aircraft configuration; types of visual, motion, or other simulator systems installed; the aircraft equipment being simulated; alternative configurations available for engines, instrumentation, and other equipment; and includes the date each above item was qualified.