

5 of the Code of Federal Regulations is amended as follows:

#### **PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS**

1. The authority citation for part 1605 continues to read as follows:

**Authority:** 5 U.S.C. 8351 and 8474.

2. Section 1605.2 is amended by revising paragraph (c)(5) to read as follows:

#### **§ 1605.2 Makeup of missed or insufficient contributions.**

\* \* \* \* \*

(c) \* \* \*

(5) When establishing a schedule of makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions, would exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made.

(i) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit(s) contained in I.R.C. 402(g) and 415.

(ii) A schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

\* \* \* \* \*

3. Section 1605.4 is amended by revising paragraph (c)(1) to read as follows:

#### **§ 1605.4 Back pay awards and other retroactive pay adjustments.**

\* \* \* \* \*

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed before the back pay or other retroactive pay adjustment is made. The makeup employee contributions must be deducted from the back pay or other retroactive pay adjustment and contributed to the TSP. However, contributions must not be made that would cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415 of

the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year.

\* \* \* \* \*

[FR Doc. 98-2166 Filed 1-28-98; 8:45 am]

BILLING CODE 6760-01-M

#### **DEPARTMENT OF AGRICULTURE**

##### **Agricultural Marketing Service**

##### **7 CFR Part 979**

[Docket No. FV98-979-1 IFR]

##### **Melons Grown in South Texas; Decreased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule decreases the assessment rate established for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1997-98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997-98 fiscal period began October 1 and ends September 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective January 30, 1998. Comments received by March 30, 1998, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. Comments should reference the docket 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.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax:

(956) 682-5942 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) 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, South Texas melon 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 melons beginning October 1, 1997, and continuing 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 the Secretary 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 the Secretary 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 the Secretary'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 decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from \$0.07 to \$0.04 per carton.

The Texas melon marketing order provides authority for the Committee, with the approval of the Department, 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 South Texas melons. 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.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a telephone vote, unanimously recommended 1997–98 administrative expenses of \$100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in September 1997. The assessment rate and funding for research projects, promotion, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on December 16, 1997, and unanimously recommended 1997–98 expenditures of \$158,200 and an assessment rate of \$0.04 per carton of melons. In comparison, last year's budgeted expenditures were \$308,000. The assessment rate of \$0.04 is \$0.03 less than the rate currently in effect. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The assessment rate decrease is necessary to bring expected assessment income closer to the amount necessary to administer the program for the 1997–98 fiscal period. At the current rate, assessment income would exceed anticipated expenses by about \$112,700, and the projected reserve of \$234,269 on September 30, 1998, would exceed the level the Committee believes to be adequate to administer the program.

Major expenses recommended by the Committee for the 1997–98 fiscal period include \$84,500 for personnel and administrative expenses, \$40,500 for compliance, \$23,200 for research projects, and \$10,000 for promotion. Budgeted expenses for these items in 1996–97 were \$84,500, \$115,500, \$108,000, and \$0, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Melon shipments for the year are estimated at 3,870,000 cartons, which should provide \$154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$228,669) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 the 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 33 producers of South Texas melons in the production area and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods from \$0.07 to \$0.04 per carton. The Committee unanimously recommended 1997–98 expenditures of \$158,200 and an assessment rate of \$0.04 per carton of melons. In comparison, last year's budgeted expenditures were \$308,000. The assessment rate of \$0.04 is \$0.03 less than the rate currently in effect. At the rate of \$0.07 per carton and an estimated 1998 melon production of 3,870,000 cartons, the projected reserve on September 30, 1998, would exceed the level the Committee believes to be adequate to administer the program. The Committee decided that an assessment rate of less than \$0.04 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1997–98 fiscal period include \$84,500 for personnel and administrative expenses, \$40,500 for compliance, \$23,200 for research projects, and \$10,000 for promotion. Budgeted expenses for these items in 1996–97 were \$84,500, \$115,500, \$108,000, and \$0, respectively.

Melon shipments for the year are estimated at 3,870,000 cartons, which should provide \$154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$228,669) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

Recent price information indicates that the grower price for the 1997–98 marketing season will range between \$7.00 and \$9.00 per carton of cantaloupes and between \$5.00 and \$7.00 per carton of honeydew melons.

Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .006 and .004 percent for cantaloupes and between .008 and .006 percent for honeydew melons.

This action reduces the assessment obligation imposed on handlers. While this rule imposes some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large South Texas melon 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for South Texas melons; (2) the 1997–98 fiscal period began on October 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (3) handlers are

aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

#### PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### § 979.219 [Amended]

2. Section 979.219 is amended by removing the words “October 1, 1996,” and adding in their place the words “October 1, 1997,” and by removing “\$0.07” and adding in its place “\$0.04.”

Dated: January 23, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–2123 Filed 1–28–98; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV97–989–3 FIR]

#### Raisins Produced From Grapes Grown in California; Modifications to the Raisin Diversion Program

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule modifying the raisin diversion program (RDP) currently authorized under the Federal marketing order for California raisins. The marketing order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Under the RDP, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin

production in order to bring raisin supplies more closely in line with market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule continues in effect various modifications to the diversion program to improve compliance and bring the program in line with current industry practices. Improving compliance with the RDP helps ensure equity among all producers who participate in the program, and helps maintain the integrity of the RDP.

**EFFECTIVE DATE:** March 2, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**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 marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

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.

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 the Secretary 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