

Also, a 60-day comment period was provided for in the proposed rule, and no comments were received from the California olive industry.

#### List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

#### PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 932.121 is revised to read as follows:

##### § 932.121 Producer districts.

Pursuant to the authority in § 932.35(k), commencing with the term of office beginning June 1, 2005, district means any of the following geographical areas of the State of California:

(a) District 1 shall include the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof.

(b) District 2 shall include the counties of Mono, Mariposa, Merced, San Benito, Monterey and all counties south thereof.

■ 3. Section 932.125 is revised to read as follows:

##### § 932.125 Producer representation on the committee.

Pursuant to the authority in §§ 932.25 and 932.35(k), commencing with the term of office beginning June 1, 2005, representation shall be apportioned as follows:

(a) District 1 shall be represented by three producer members and alternates.

(b) District 2 shall be represented by five producer members and alternates.

Dated: February 1, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV05–989–1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2004–05 and subsequent crop years from \$8.00 to \$11.00 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 2004–05 crop is smaller than normal, and no volume regulation will be implemented this year. As a result, some expenses funded by handler assessments will increase. The \$8.00 per ton assessment rate will not generate enough revenue to cover expenses. The \$11.00 per ton assessment will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** February 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Assistant Regional Manager, 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 final 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 increased herein will be applicable to all assessable raisins beginning on August 1, 2004, 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 final rule increases the assessment rate established under the order for the 2004–05 and subsequent crop years from \$8.00 to \$11.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 2004–05 crop is

smaller than normal, and no volume regulation will be implemented this year. As a result, some expenses funded by handler assessments will increase. The \$8.00 per ton assessment rate will not generate enough revenue to cover expenses. This action was recommended by the Committee at a meeting on October 5, 2004.

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.

Section 989.79 also provides authority for the Committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the Committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining "free" percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted from proceeds obtained from the sale of reserve raisins. Net proceeds are returned to the pool's equity holders, primarily producers.

When volume regulation is in effect, an administrative budget funded by handler assessments is developed, and a reserve pool budget funded by the current year's reserve pool is developed. Committee costs are apportioned between the two revenue sources. When volume regulation is not implemented, the Committee develops an administrative budget funded solely from handler assessments.

When the Committee met on August 12, 2004, it recommended two budget scenarios for the 2004–2005 crop year to accommodate both situations, because it was not known at that time if volume regulation would be implemented. At that time, it appeared the crop may be short, but the initial crop estimate would not be available until a later date.

The first budget scenario recommended was premised on the

assumption that volume regulation would be implemented. Under this scenario, the Committee recommended an administrative budget of expenses totaling \$2,200,000 and a reserve pool budget of \$2,839,225. The assessment rate would remain unchanged at \$8.00 per ton. This assessment rate applied to estimated acquisitions of raisins by handlers of 275,000 tons would provide adequate revenue to fund the administrative budget.

The second budget scenario recommended was based on the premise that volume regulation would not be implemented for the 2004–05 season. Under this scenario, various expenses typically split between the reserve pool budget and the administrative budget would be funded by the administrative budget. In addition, some expense categories would be eliminated, some reduced, and another would be allocated to the existing 2003–04 reserve pool budget. The administrative budget would increase to \$3,025,000, thus necessitating an increase in the assessment rate to \$11.00 per ton.

The Committee met on October 5, 2004, and determined that no volume regulation for the 2004–05 crop year was warranted because of a short crop. The crop estimate for Natural (sun-dried) Seedless raisins, the major raisin variety produced, was 199,344 tons. If realized, this would be the smallest crop in over 20 years. Production of other varietal types was also estimated to be relatively low. The lack of volume regulation triggered implementation of the Committee's recommendation for an administrative budget of \$3,025,000 and an increased assessment rate from \$8.00 per ton to \$11.00 per ton.

In developing this budget, the Committee reviewed and identified those expenses that were considered reasonable and necessary to continue operation of the raisin marketing order program. Several costs normally associated with administering a reserve pool were eliminated, such as insurance coverage (\$400,000), costs for repairing reserve storage bins (\$300,000), raisin hauling costs (\$65,000), auditing fees (\$20,000), and bank charges (\$20,000). Other costs usually split between the administrative and reserve pool budgets were also to be eliminated, such as production of industry brochures (\$20,000) and research and communication activities (\$70,000). It was determined that these activities, while desirable, could be eliminated without adversely impacting Committee operations.

Other expenses traditionally split between the reserve and administrative budgets were reduced. For example,

total compliance activity costs budgeted at \$500,000 (\$250,000 allocated to the reserve budget and \$250,000 allocated to the administrative budget) were reduced to \$320,000, to be funded from the administrative budget. Purchase of equipment was also reduced, from a combined amount of \$50,000, to \$25,000 funded from the administrative budget.

Other costs usually split between the reserve pool and administrative budgets that will be funded by the administrative budget include general overhead costs such as salaries, taxes, retirement and other benefits, insurance, rent, office supplies, and Committee travel. These costs remain the same regardless of whether there is a reserve pool, as they are necessary to continue administration of the program. Finally, \$836,000 in costs associated with administering export programs will be funded by the existing 2003–04 reserve pool budget, and \$536,000 will be funded under the administrative budget for 2004–05.

A direct comparison of expenses between the recommended 2004–05 budget and the 2003–04 budget is difficult because the 2004–05 budget is only administrative, whereas in 2003–04 there was an administrative and a reserve pool budget. In total, the 2004–05 recommended administrative budget of \$3,025,000 compares to the 2003–04 administrative budget of \$2,000,000. However, the \$3,025,000 administrative budget is \$1,609,800 less than the combined 2003–04 administrative and reserve pool budgets of \$4,634,800.

Major expense categories include \$1,000,000 for salaries, \$536,000 for export program activities (administrative budget only), \$320,000 for compliance activities, \$150,000 for group health insurance, \$110,000 for rent, \$120,000 for Committee member and staff travel, and \$110,000 for computer software and programming.

A continuous assessment rate of \$8.00 per ton has been in effect since the 2002–03 crop year. For the 2004–05 crop year, the Committee recommended increasing the assessment rate to \$11.00 per ton of assessable raisins to cover recommended administrative expenditures of \$3,025,000. The recommended \$11.00 per ton assessment rate was derived by dividing the \$3,025,000 in anticipated expenses by an estimated 275,000 tons of assessable raisins. 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 other 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 2004–05 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), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 7 handlers have sales less than \$5,000,000. No more than 7

handlers, and a majority of producers, 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 2004–05 and subsequent crop years from \$8.00 to \$11.00 per ton of assessable raisins acquired by handlers. The 2004–05 crop is estimated to be smaller than normal, and as a result, the Committee determined that volume regulation for the season was not warranted.

When volume regulation is in effect, the Committee establishes two budgets; one for administrative expenses funded by handler assessments, and one for expenses incurred in connection with a reserve pool. Many of the Committee costs are split between the reserve pool budget and the administrative budget.

When no volume regulation is in effect during a crop year, there is no reserve pool budget for that crop year. However, the Committee continues to incur fixed costs associated with administering the marketing order program. Therefore, the Committee reviewed and identified the expenses that would be reasonable and necessary to continue program operations without a reserve pool in effect during the 2004–05 crop year. Operating expenses typically split between the administrative and reserve pool budgets were allocated to the administrative budget, some expenses were reduced, some expenses were eliminated, and some export program activity expenses were allocated to the existing 2003–04 reserve pool budget.

The resulting administrative budget recommended includes expenses totaling \$3,025,000 for the 2004–05 crop year. While this is an increase from the 2003–04 administrative budget of \$2,000,000, it represents a decrease in the 2003–04 combined administrative and reserve pool budgets which totaled \$4,634,800.

Because the 2004–05 administrative budget funded some of the costs typically allocated to a reserve budget, a direct comparison to 2003–04 administrative costs would be difficult. A comparison of 2004–05 recommended administrative expenditures to combined 2003–04 administrative and reserve pool budget expenditures therefore follows: 2004–05 salaries, \$1,000,000 (2003–04 combined budgeted expenditures for salaries was \$1,000,000); \$456,000 for export program activities, (\$1,246,000); \$320,000 for compliance activities, (\$320,000); \$150,000 for group health insurance, (\$165,000); \$110,000 for rent, (\$106,000); \$120,000 for Committee member and staff travel, (\$120,000); and

\$110,000 for computer software and programming, (\$107,800).

With anticipated assessable tonnage at 275,000 tons, sufficient income should be generated at the \$11.00 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 an alternative assessment rate and budget prior to arriving at the \$11.00 per ton and \$3,025,000 administrative budget recommendation. The Committee's Audit Subcommittee met on July 1, 2004, to review preliminary budget information. The subcommittee was aware that the 2004–05 crop may be short and no volume regulation may be implemented. The subcommittee thus developed two budgets and assessment rates to accommodate a scenario with volume regulation and another scenario with no volume regulation. If volume regulation was to be implemented, the assessment rate would remain at \$8.00 per ton. If volume regulation was not implemented, costs typically allocated to a reserve pool budget would be absorbed by the administrative budget, thus necessitating an increased assessment rate to \$11.00 per ton. The Committee approved these budget and assessment recommendations on August 12, 2004.

The Committee met again on October 5, 2004, and determined that volume regulation was not warranted for the season. This triggered implementation of the Committee's recommendation for an administrative budget of \$3,025,000 and assessment rate of \$11.00 per ton.

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. A grower price of a minimum of \$1,210 per ton for the 2004–05 crop raisins has been announced by the Raisin Bargaining Association. If this price is realized, assessment revenue will continue to be less than one percent of grower revenue in the 2004–05 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action will 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 will be offset by the benefits derived by the operation of the marketing order.

Additionally, the Audit Subcommittee and full Committee

meetings held on July 1, 2004, and August 12, 2004, respectively, 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.

This final rule imposes 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 proposed rule concerning this action was published in the **Federal Register** on December 10, 2004 (69 FR 71753). Copies of the proposed rule were also mailed or sent via facsimile to all raisin handlers. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending December 20, 2004, was provided to allow interested persons to respond to the proposal.

One comment was received in reference to the proposal. The comment did not address anything specific to the proposed rule. No changes are made to the final rule in response to the comment.

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.

After consideration of all relevant material presented, including the recommendation and information submitted by the Committee and other available information, the comment received, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the marketing order requires that the rate of assessment for each crop year apply to assessable raisins handled during such period. The crop year began on August 1, 2004, and the harvest is completed. The Committee needs additional revenues to meet its ongoing expenses. Further, handlers are aware of this rule, which

was recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule, and no comments from the California raisin industry were received.

#### 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, 2004, an assessment rate of \$11.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: February 1, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–2217 Filed 2–4–05; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Part 30**

[Docket No. 05–02]

**RIN 1557–AC93**

#### **OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Appendix to regulations; final guidelines.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is issuing, as an appendix to part 30 of its regulations, guidelines concerning the residential mortgage lending practices of national banks and their operating subsidiaries (Guidelines) as a further step to protect against national bank involvement in predatory, abusive, unfair, or deceptive residential mortgage lending practices. The Guidelines describe particular practices inconsistent with sound

residential mortgage lending practices. They also describe other terms and practices that may be conducive to predatory, abusive, unfair, or deceptive lending practices, depending on the circumstances, and which, accordingly, warrant a heightened degree of care by lenders. In addition, the Guidelines address the steps that banks should take to mitigate risks associated with their purchase of residential mortgage loans and use of mortgage brokers to originate loans. The Guidelines focus on the substance of activities and practices, not on the creation of policies. The standards contained in the Guidelines are enforceable pursuant to section 39 of the Federal Deposit Insurance Act and the implementing process set forth in part 30 of the OCC's regulations.

**EFFECTIVE DATE:** April 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the Guidelines, contact Michael Bylsma, Director, Community and Consumer Law Division, (202) 874–5750, Michele Meyer, Special Counsel, Legislative & Regulatory Activities Division, (202) 874–5090, or Rick Freer, National Bank Examiner, Compliance, (202) 874–4428, 250 E Street, SW., Washington, DC 20219.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

National banks are authorized by statute to engage in real estate lending activities, subject to the requirements of Federal law,<sup>1</sup> and national banks' real estate lending is closely supervised and comprehensively regulated under a regulatory framework that includes a wide variety of Federal laws and regulations designed to ensure the protection of consumers of banks' residential mortgage products and services.<sup>2</sup>

Fair treatment of customers is fundamental to sound banking practices

<sup>1</sup> 12 U.S.C. 371(a); and see 12 CFR part 34 (OCC rules governing real estate lending and appraisals implementing 12 U.S.C. 1828(o)).

<sup>2</sup> Federal consumer protection laws and regulations that apply with respect to the residential real estate lending activities of national banks and their operating subsidiaries include: the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*; the Home Ownership and Equity Protection Act, 15 U.S.C. 1639 *et seq.*; the Fair Housing Act, 42 U.S.C. 3601 *et seq.*; the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*; the Real Estate Settlement Procedures Act, 12 U.S.C. 1261 *et seq.*; the Flood Disaster Protection Act, 42 U.S.C. 4001 *et seq.*; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, as recently amended by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 111 Stat. 1952; the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*; and the privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*