

category. Subsequently, FNS will divide the remaining money among the States in each category (see paragraph (b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or program access index (which is outlined in paragraph (b)(3) of this section). If a State is determined to be among the best and the most improved in a category, it will be awarded a bonus only for being the best. The next State in the best category will be awarded a bonus as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) *Performance measures.* FNS will measure performance by and base awards on the following categories of performance measures:

(1) *Payment accuracy.* FNS will divide \$24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Excellence in payment accuracy.* FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) *Most improved in payment accuracy.* FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year, as determined in accordance with this part.

(2) *Negative error rate.* FNS will divide \$6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) *Lowest negative error rate.* FNS will provide bonuses to the 4 States with the lowest negative error rates based on the validated quality control negative error rates for the performance

year as determined in accordance with this part.

(ii) *Most improved negative error rate.* FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates, based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year, as determined in accordance with this part. A State agency is not eligible for a bonus under this criterion if the State's negative error rate for the fiscal year is more than 50 percent above the national average.

(3) *Program access index (PAI).* FNS will divide \$12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section. The PAI is the ratio of participants to persons with incomes below 125 percent of poverty, as calculated in accordance with paragraph (b)(3)(iii) of this section (the PAI was formerly known as the participant access rate (PAR)).

(i) *High program access index.* FNS will provide bonuses to the 4 States with the highest PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) *Most improved program access index.* FNS will provide bonuses to the 4 States with the most improved PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) *Data.* For the number of participants (numerator), FNS will use the administrative annual counts of participants minus new participants certified under special disaster program rules by State averaged over the calendar year. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's March Supplement to the Current Population Survey's (CPS) count of people below 125 percent of poverty for the same calendar year. FNS will reduce the count in each State where a Food Distribution Program on Indian Reservations (FDPIR) program is operated by the administrative counts of the number of individuals who participate in this program averaged over the calendar year. FNS will reduce the count in California by the Census Bureau's percentage of people below 125% of poverty in California who received Supplemental Security Income in the previous year. FNS reserves the right to use data from the American Community Survey (ACS) in lieu of the CPS, and to use the count of people below 130 percent of poverty, should these data become available in a timely

fashion and prove more accurate. Such a substitution would apply to all States.

(4) *Application processing timeliness.* FNS will divide \$6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data to determine each State's rate of application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the "opportunity to participate" as defined in § 274.2 of this chapter, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pending in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure. Applications that are denied will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

Dated: January 31, 2005.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition and Consumer Services.*

[FR Doc. 05-2260 Filed 2-4-05; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV04-932-2 FR]

#### **Olives Grown in California; Redistricting and Reapportionment of Producer Membership on the California Olive Committee**

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

**ACTION:** Final rule.

**SUMMARY:** This rule redefines the producer districts and reapportions each district's membership on the California Olive Committee (committee). The Federal marketing order for California olives (order) regulates the handling of canned ripe olives grown in California and is administered locally by the committee. This rule reduces the number of producer districts in the production area from four to two and reapportions the committee representation from each district to

reflect the consolidation. These changes reflect recent shifts in olive acreage and producer numbers within the production area and should provide equitable committee representation from each district.

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

**FOR FURTHER INFORMATION CONTACT:**

Laurel L. May, 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 final rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives 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 final 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 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 consolidates the four existing producer districts into two larger districts. Producer representation on the committee is reapportioned accordingly. These changes reflect recent shifts in olive acreage and producer numbers within the production area and should assure equitable committee representation from each district. This action was unanimously recommended by the committee at a meeting on July 8, 2004.

Section 932.21 of the order defines the producer districts as geographical areas of the State of California. Section 932.25 establishes an administrative committee of olive handlers and producers and provides for the allocation of committee membership to assure equitable producer representation from the districts. Section 932.35(k) authorizes the redefinition of the producer districts and the reapportionment of committee membership as needed to reflect shifts in olive acreage within the districts and area, numbers of growers in the districts, and the tonnage produced to assure equitable producer representation on the committee.

Currently, § 932.121 of the order's administrative rules and regulations lists and defines four producer districts within the production area. District 1 includes Glenn, Tehama and Shasta Counties. District 2 includes the counties of Mono, Mariposa, Merced, San Benito, Monterey, and all counties south thereof excluding Tulare County. District 3 includes the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof except those in District 1. District 4 includes Tulare County.

Section 932.125 specifies the producer representation on the committee. Currently, District 1 is represented by two producer members on the committee. District 2 is represented by one producer member. District 3 is represented by one producer member. District 4 is represented by four producer members.

At its meeting on July 8, 2004, the committee recommended redefining the producer districts to consolidate the four existing districts into two. The committee also recommended

reapportionment of the producer membership on the committee to reflect the consolidation of the districts. The committee believes that redistricting and reapportioning the eight producer member positions and alternates should provide equitable representation throughout the production area. The committee based this recommendation on the current olive acreage and number of producers as required under the marketing order.

Total canned ripe olive acreage in the production area has declined by approximately four percent since 1994. Although production acreage in District 1 has increased by approximately 21 percent, shifts in varietal preference and challenging production conditions have led to declining acreages in the other districts. Production acreages in Districts 2, 3, and 4 have declined by approximately 34 percent, 99 percent, and 1 percent, respectively.

The number of producers in the entire production area has declined by approximately 23 percent since 1994. Some of the decline has been caused by changes in ownership of productive acreage, and some producers have stopped growing olives for cannery use. While District 1 has lost only two percent of its producers since 1994, Districts 2, 3, and 4 have lost 49 percent, 89 percent, and 29 percent, respectively. Some districts no longer have enough available or eligible producers to fill all the member seats currently allocated them on the committee.

Revisions to both the district definitions and committee membership apportionment were last made in 1987. At that time District 4 was created because Tulare County represented more than 45 percent of the average production, number of producers, and acreage of the entire production area. District 4 now represents approximately 56 percent of the canned ripe olive acreage as well as approximately 51 percent of the producers in the production area. District 4 is represented by 50 percent of the producer members and alternates on the committee.

Other districts are less equitably represented. District 1 currently has 36 percent of the total acreage in the production area and 46 percent of the producers, but is represented by only 25 percent of the committee's producer members and alternates. District 2, with nine percent of the acreage and two percent of the producers is represented by 12.5 percent of the committee members. District 3, with less than 1 percent of both the total acreage and number of producers is likewise represented by 12.5 percent of the

committee's producer members and alternates.

Recent shifts in production acreage as well as the decline in producer numbers in the districts prompted the committee to recommend the consolidation of the two northern districts into one producer district, and the two southern districts into one producer district. The shifts in production acreage and the declines in producer numbers reflect similar changes in the tonnage produced.

The committee believes that it should be easier for each district to provide equitable representation on the committee if the districts with declining acreages and producer numbers are combined with districts having higher acreages and producer numbers. The pool of available producers from which to select committee members should then be increased for each producer district.

Accordingly, it was proposed that Districts 1 and 3 be combined to form a new District 1. District 1 will then include the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz and all other counties north thereof. Districts 2 and 4 will be combined to form a new District 2, which will include the counties of Mono, Mariposa, Merced, San Benito, Monterey and all other counties south thereof. Producer representation on the committee will then be reapportioned to provide three members (and alternates) from District 1 and five members (and alternates) from District 2.

These changes should benefit producers by maintaining an equitable representation on the committee as to production acreage and number of producers in each district. Under this final rule, District 1, with 36 percent of the total production acreage and 47 percent of the total number of producers will be represented by 38 percent of the producer members and alternates on the committee. District 2, with 64 percent of the total acreage and 53 percent of the total number of producers will be represented by 62 percent of the committee's producer members and alternates.

#### 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 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 business subject to such actions to ensure 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 850 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.601) defines small agricultural producers as those with annual receipts less than \$750,000, and small agricultural service firms as those with annual receipts less than \$5,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities, but only one of the three handlers may be classified as a small entity.

This rule revises § 932.121 of the order's administrative rules and regulations pertaining to producer districts, and § 932.125 pertaining to producer representation on the committee. The changes decrease the number of producer districts from four to two and reapportion producer membership on the committee to reflect the consolidation. District 1, comprising the northern part of the production area, is apportioned three producer members (and alternates) on the committee. District 2, comprising the southern part of the production area, is apportioned five producer members (and alternates) on the committee. These changes reflect recent shifts in olive acreage and producer numbers within the production area and should provide equitable committee representation from each district. The committee unanimously recommended these changes.

This rule consolidates producer districts and reallocates producer membership on the committee; thus, there should be no additional anticipated costs to handlers or producers.

The only alternative to these changes discussed by the committee was to leave the districts and producer membership allocation as they currently exist. However, the committee believes that the recent shifts in acreage and producer numbers within the districts and production area have made these changes necessary to assure equitable producer representation from the districts.

This final rule imposes no additional reporting or recordkeeping requirements on California olive 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 rule.

In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the July 8, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 28, 2004 (69 FR 62829). Copies of the rule were mailed or sent via facsimile to all committee members and olive handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 27, 2004, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One comment generally opposed the program while the second indicated that the olive committee should be disbanded. However, neither comment added anything specific to the proposed rule. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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 matter presented, including the information submitted by the committee and other available information, the comments 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** because nominations for committee positions are scheduled to take place in February 2005. The committee needs as much time as possible to make adequate preparations for the nomination meetings. Further, producers and handlers are aware of this rule, which was recommended at a public meeting.

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.*

[FR Doc. 05–2216 Filed 2–4–05; 8:45 am]

**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