



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

**[Doc. No. AMS-SC-18-0001; SC18-932-1 FR]**

**Olives Grown in California; Decreased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the California Olive Committee (Committee) to decrease the assessment rate established for the 2018 fiscal period for olives grown in California. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**FOR FURTHER INFORMATION CONTACT:** Peter Sommers, Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: PeterR.Sommers@ams.usda.gov or Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of producers and handlers of olives operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because

this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California olive handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as established herein would be applicable to all assessable olives beginning on January 1, 2018, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted

therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the 2018 and subsequent fiscal periods from \$26.00 to \$24.00 per ton of assessed olives.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of olives in California. They are familiar with the Committee's needs, with the costs for goods and services in their local area, and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated in a public meeting where all directly affected persons have an opportunity to participate and provide input.

For the 2015 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of \$26.00 per ton of assessed olives. That rate would continue in effect unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 13, 2017, and unanimously recommended 2018 expenditures of \$1,940,477, and an assessment rate of \$24.00 per ton of assessed olives. In comparison, last year's budgeted expenditures were \$1,752,366. The assessment rate of \$24.00 is \$2.00 lower than the rate currently in effect. Handlers received 83,799 tons of assessable olives during the 2017 crop year, which is higher than the 63,000 tons of assessable olives received during the 2016 crop year. The 2018 fiscal year assessment rate decrease is necessary to ensure the Committee has sufficient revenue to fund the recommended 2018 budgeted expenditures while ensuring the funds in the financial reserve would be kept within the maximum permitted by § 932.40.

The Order has a fiscal year and a crop year that are

independent of each other. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1 and ends on December 31 of each year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. For the Committee's assessment rate, the actual 2017 crop year receipts are used to determine the assessment rate for the 2018 fiscal year.

The major expenditures recommended by the Committee for 2018 includes \$401,200 for program administration, \$973,500 for marketing activities, and \$297,777 for research. Budgeted expenses for these items during the 2017 fiscal year were \$513,100 for program administration, \$823,500 for marketing activities, and \$317,766 for research. The assessment rate recommended by the Committee resulted from consideration of proposed fiscal year expenses, actual olive tonnage received by handlers during the 2017 crop year, and the amount of funds in the Committee's financial reserve.

Income derived from handler assessments, along with interest income and funds from the Committee's authorized

reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the Order of approximately one fiscal year's expenses.

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

Although this assessment rate will be 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 USDA. Committee meetings are open to the public, and interested persons are encouraged to 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 budget for fiscal year 2018 and those for

subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,100 producers of olives in the production area and two handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts

are less than \$7,500,000 (13 CFR 121.201). Based upon National Agricultural Statistics Service (NASS) information, the average price to producers for the 2016 crop year was \$865.00 per ton, and total assessable volume for the 2017 crop year was 83,799 tons. Based on production, price paid to producer, and the total number of California olive producers, the average annual producer revenue is less than \$750,000 ( $\$865.00 \times 83,799 = \$72,486,135$ , divided by 1,100 producers equals an average annual producer revenue of \$65,896). Thus, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities under the SBA's definitions because their annual receipts are greater than \$7,500,000.

This rule decreases the assessment rate collected from handlers for the 2018 and subsequent fiscal years from \$26.00 to \$24.00 per ton of assessable olives. The Committee unanimously recommended 2018 expenditures of \$1,940,477 and an assessment rate of \$24.00 per ton of assessable olives. The recommended assessment rate of \$24.00 is \$2.00 lower than the 2017 rate. The quantity of assessable olives for the 2017 crop year is 83,799 tons,

which should provide \$2,011,176 in assessment income. The lower assessment rate is possible because annual receipts for the 2017 crop year are 83,799 tons compared to 63,000 tons for the 2016 crop year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Income derived from the \$24.00 per ton assessment rate, along with funds from the authorized reserve and interest income, should be adequate to meet this fiscal year's expenses.

The major expenditures recommended by the Committee for the 2018 fiscal year include \$401,200 for program administration, \$973,500 for marketing activities, and \$297,777 for research. Budgeted expenses for these items during the 2017 fiscal year were \$513,100 for program administration, \$823,500 for marketing activities, and \$317,766 for research.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the

increased olive production. The assessment rate of \$24.00 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2016 crop year was \$865.00 per ton. Therefore, utilizing the assessment rate of \$24.00 per ton, the assessment revenue for the 2018 fiscal year as a percentage of total producer revenue would be approximately 2.77 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the production area. The olive industry and all interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the December 13, 2017, meeting was a public meeting and all

entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large 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 mentioned in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities

for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A proposed rule concerning this action was published in the *Federal Register* on April 4, 2018 (83 FR 14379). A copy of the proposed rule was provided to the handlers by the Committee. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 4, 2018, was provided for interested persons to respond to the proposal. No comments were received. The proposal also contained administrative revisions to the Order's subpart headings to bring the language into conformance with the Office of Federal Register requirements. Those revisions are not included in this rule as they were included in a technical amendment final rule published in the *Federal Register* on April 6, 2018 (83 FR 14736).

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the

compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

**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 part 932 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 932.230 is revised to read as follows:

**§ 932.230 Assessment rate.**

On and after January 1, 2018, an assessment rate of \$24.00 per ton is established for California olives.

Dated: June 15, 2018.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

*BILLING CODE 3410-02 P*

[FR Doc. 2018-13271 Filed: 6/19/2018 8:45 am; Publication Date: 6/20/2018]