



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-18-0105; SC19-932-1 PR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Olive Committee (Committee) to increase the assessment rate established for the 2019 fiscal year and subsequent fiscal years. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in

the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538-1672, Fax: (559) 487-5906, or Email: Kathie.Notoro@usda.gov or Terry.Vawter@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 Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed 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, and one public member.

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

Additionally, because this proposed 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 proposed 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 would be applicable to all assessable olives beginning on January 1, 2019, 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.

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 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.

This proposed rule would increase the assessment rate from \$24.00 per ton of assessed olives, the rate that was established for the 2017-18 and subsequent fiscal years, to \$44.00 per ton of assessed olives for the 2019 and subsequent fiscal years. The proposed higher rate is a result of a significantly reduced crop size, a late season freeze, and the need to cover Committee expenses.

The Committee met on December 11, 2018, and unanimously recommended 2019 expenditures of \$1,628,923, and an assessment rate of \$44.00 per ton of assessed olives. In comparison, last year's budgeted expenditures were \$1,749,477. The proposed assessment rate of \$44.00 is \$20.00 higher than the rate currently in effect. Producer receipts show

a yield of 17,953 tons of assessable olives from the 2018 crop year. This is substantially less than the 2017 crop year, which yielded 90,188 tons of assessable olives. The 2019 fiscal year assessment rate increase is necessary to ensure the Committee has sufficient revenue to fund the recommended 2019 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 this assessment rate proposed rule, the actual 2018 crop year receipts are used to determine the assessment rate for the 2019 fiscal year.

The major expenditures recommended by the Committee for the 2019 fiscal year includes \$713,900 for program administration, \$513,500 for marketing activities, and \$343,523 for research, and \$58,000 for inspection equipment. Budgeted expenses for these items during the 2018 fiscal year were \$401,200 for program administration, \$973,500 for marketing activities, \$297,777 for research, and \$77,000 inspection equipment.

The assessment rate recommended by the Committee resulted from consideration of anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2018 crop year, and the amount 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 proposed in this rule would 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 would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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 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 as of June 2018, the average price to producers for the 2017 crop year was \$974.00 per ton, and total assessable volume for the 2018 crop year was 17,953 tons. Based on production, price paid to producers, and the total number of California olive producers, the average annual producer revenue is less than \$750,000 ($\$974.00 \times 17,953 \text{ tons} = \$17,486,222$ divided by 1,100 producers equals an average annual producer revenue of \$15,896.57). 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 proposal would increase the assessment rate collected from handlers for the 2019 and subsequent fiscal years from \$24.00 to \$44.00 per ton of assessable olives. The Committee unanimously recommended 2019 expenditures of \$1,628,923 and an assessment rate of \$44.00 per ton of assessable olives. The recommended assessment rate of \$44.00 is \$20.00 higher than the 2018 rate. The quantity of assessable olives for the 2019 Fiscal year is 17,953 tons. Thus, the \$44.00 rate should provide \$789,932 in assessment revenue. The higher assessment rate is needed because annual receipts for the 2018 crop year are 17,953 tons compared to 90,188 tons for the 2017 crop year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Income derived from the \$44.00 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 2019 fiscal year include \$713,900 for program administration, \$513,500 for marketing activities, \$343,523 for research, and \$58,000 for inspection equipment. Budgeted expenses for these items during the 2018 fiscal year were \$401,200 for program administration, \$973,500 for marketing activities, \$297,777 for research, and \$77,000 for inspection equipment.

The Committee deliberated on many of the expenses, weighed the relative

value of various programs or projects, and increased their expenses for marketing and research activities.

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 \$44.00 per ton of assessable olives was derived by considering anticipated expenses, the low volume of assessable olives, a late season freeze, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2017 crop year was \$974.00 per ton. Therefore, utilizing the assessment rate of \$44.00 per ton, the assessment revenue for the 2019 fiscal year as a percentage of total producer revenue would be approximately 4.52 percent.

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order. 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 participate in Committee

deliberations on all issues. Like all Committee meetings, the December 11, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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. 0581-0178 Vegetable Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any 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.

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 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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rule.

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 proposed to be 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 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2019, an assessment rate of \$44.00 per ton is established for California olives.

Dated: April 18, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

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