



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

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

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the California Olive Committee (Committee) to increase the assessment rate for California olives handled under Marketing Order No. 932. 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: 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, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 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 marketing order and is comprised of producers and handlers of olives operating within the area of production.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This 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 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 marketing order now in effect, California olive handlers are subject to assessments.

Funds to administer the marketing order are derived from such assessments. It is intended that the assessment rate will 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 a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing 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 marketing 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 in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

This rule increases the assessment rate from \$24.00 to \$44.00 per ton of assessed olives for the 2019 and subsequent fiscal years. The 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 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 enough revenue to fund the recommended 2019 budgeted expenditures while ensuring the funds in the financial reserve would be kept within the maximum permitted by the marketing order.

The marketing 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. Olives are an alternate-bearing crop, with a small crop followed by a large crop. For this assessment rate rule, the 2018 crop year receipts were 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, \$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 were based on the anticipated fiscal year expenses, olive tonnage received by handlers during the 2018 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 marketing 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. The Committee will 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. Dates and times of Committee meetings are available from the Committee or USDA. The meetings are open to the public and interested persons may express their views at these meetings. Further rulemaking would be undertaken as necessary.

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 marketing order. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), data 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, the total number of California olive producers, and price paid to those producers, the average annual producer revenue is less than \$750,000 (\$974.00 times 17,953 tons equals \$17,486,222 divided by 1,100 producers equals an average annual producer revenue of \$15,896.57). Therefore, most olive producers may be classified as small entities. Both handlers may be classified as large entities under the SBA's definitions because their annual receipts are greater than \$7,500,000.

This rule increases 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. 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. The assessment rate of \$44.00 per ton of assessable olives was derived by considering anticipated expenses, the low volume of assessable olives, and a late season freeze.

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 action increases the assessment obligation imposed on handlers which 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 marketing order. In addition, the Committee's December 11, 2018 meeting was widely publicized throughout the production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the marketing order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops.

No changes in those requirements because of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final 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. 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.

A proposed rule concerning this action was published in the Federal Register on April 24, 2019 (84 FR 17089). Copies of the proposed rule were provided to all California olive handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 24, 2019, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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

Olives, Marketing agreements, 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 932.230 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: July 11, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2019-15061 Filed: 7/15/2019 8:45 am; Publication Date: 7/16/2019]