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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-20-0012; SC20-932-2 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 2020 fiscal year and subsequent fiscal years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE 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 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 a public member.

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 will be applicable to all assessable olives beginning on January 1, 2020, 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 action decreases the assessment rate from $44.00 per ton of assessed olives, the rate that was established for the 2018-19 and subsequent fiscal years, to $15.00 per ton of assessed olives for the 2020 and subsequent fiscal years. The lower rate is the result of a significantly higher crop size, and the need to cover Committee expenses.

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. Industry members serving on the Committee are familiar with its needs and with the costs of goods and services in their local area and are thus able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. All directly affected persons have an opportunity to participate and provide input.

The Committee met on December 5, 2019, and unanimously recommended 2020 expenditures of $1,035,406, and an assessment rate of $24.00 per ton of assessed olives. In comparison, last year's budgeted expenditures were $1,628,923. However, on December 6, 2019, the Committee staff received an email requesting that the assessment rate be lower than the unanimously agreed to rate of $24.00. The Committee met again by conference call on January 22, 2020, to discuss the possibility of a lower assessment rate. During the conference call, a handler and some producers stated they would be willing to pay up to $100.00 per ton during the next alternate, low-bearing year, if the crop volume tonnage drops below what is necessary to fund the Committee’s activities. After further Committee discussions, an assessment rate of $15.00 per ton of assessed olives was agreed to and recommended. The assessment rate of $15.00 is $29.00 lower than the rate currently in effect. Handlers received 81,689 tons of assessable olives from the 2019 crop year. This is substantially more than the 2018 crop year, which was 17,953 tons of assessable olives. The 2020 fiscal year assessment rate decrease will ensure the Committee has enough revenue to fund the recommended 2020 budgeted expenditures while ensuring the funds in the financial reserve will 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 assessment rate rules under the Order, the actual, rather than estimated, 2019 crop year receipts are used to determine the assessment rate for the 2020 fiscal year.

The major expenditures recommended by the Committee for the 2020 fiscal year includes $631,300 for program administration, $123,500 for marketing activities, $225,606 for research, and $55,000 for inspection equipment. Budgeted expenses for these items during the 2019 fiscal year were $713,900 for program administration, $513,500 for marketing activities, $343,523 for research, and $58,000 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 2019 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 established in this final 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 in effect for an indefinite period, 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. 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 would be undertaken as necessary. The Committee's budget for subsequent fiscal 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) (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 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 800 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 $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

Based upon National Agricultural Statistics Service (NASS) information as of June 2019, the average price to producers for the 2019 crop year was $766.00 per ton, and total assessable volume for the 2019 crop year was 81,689 tons. Based on production, price paid to producers, and the total number of California olive producers, the average annual producer revenue is less than $1,000,000 ($766.00 times 81,689 tons equals $62,573,774 divided by 800 producers equals an average annual producer revenue of $78,217.22). Thus, the majority of 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 $30,000,000.

This final rule decreases the assessment rate collected from handlers for the 2020 and subsequent fiscal years from $44.00 to $15.00 per ton of assessable olives. The Committee unanimously recommended 2020 expenditures of $1,035,406 and an assessment rate of $15.00 per ton of assessable olives. The recommended assessment rate of $15.00 is $29.00 lower than the 2019 rate. The quantity of assessable olives for the 2020 fiscal year is 81,689 tons. The $15.00 rate should provide $1,225,335 in assessment revenue. The lower assessment rate is possible because annual receipts for the 2019 crop year are

81,689 tons compared to 17,953 tons for the 2018 crop year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Income derived from the $15.00 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 2020 fiscal year include $631,300 for program administration, $123,500 for marketing activities, $225,606 for research, and $55,000 for inspection equipment. Budgeted expenses for these items during the 2019 fiscal year were $713,900 for program administration, $513,500 for marketing activities, $343,523 for research, and $58,000 for inspection equipment. The Committee deliberated many of the expenses, weighed the relative value of various programs or projects, and decreased its 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 $15.00 per ton of assessable olives was derived by considering anticipated expenses, the high volume of assessable olives, and additional pertinent factors.

NASS data indicate the average producer price for the 2019 crop year was $766.00 per ton. Therefore, utilizing the assessment rate of $15.00 per ton, the assessment revenue for the 2020 fiscal year as a percentage of total producer revenue will be approximately 0.02 percent.

This action decreases 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, decreasing the assessment will reduce the burden on handlers and may reduce the burden on producers.

The Committee's meetings were widely publicized throughout the production area. The olive industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 5, 2019 and the January 22, 2020, meetings were public meetings. 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. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they will 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 noted 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.

A proposed rule concerning this action was published in the *Federal Register* on March 4, 2020 (85 FR 12757). Copies of the proposed rule were provided to all olive producers and handlers. The proposal was made available through the internet by USDA and the Office of the *Federal Register*. A 30-day comment period ending April 3, 2020, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the proposed rule. 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 7 CFR part 932 continues to read as follows:

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

2. Revise § 932.230 to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2020, an assessment rate of $15.00 per ton is established for California olives.

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Bruce Summers,

Administrator,

Agricultural Marketing Service.
[FR Doc. 2020-09345 Filed: 5/13/2020 8:45 am; Publication Date: 5/14/2020]