



Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-22-0094]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Olive Committee (Committee) to increase the assessment rate established for the 2023 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 DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901 or Email: Jeremy.Sasselli@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, 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 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 administers the Order and is comprised of producers and handlers of olives operating within the area of production and may have one public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 updates and modernizes Executive Order 12866 and directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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. The assessment rate established herein will be applicable to all assessable olives beginning on January 1,

2023, 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 the United States Department of Agriculture (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 AMS, to formulate an annual budget of expenses and to 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 can 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 final rule increases the assessment rate from \$16 per ton of assessed olives, the rate that was established for the 2022 and subsequent fiscal years, to \$35 per ton of assessed olives for the 2023 and subsequent fiscal years. The higher rate is the result of the significantly lower crop size in 2022 (fruit that is marketed over the course of the 2023 fiscal year) and the need to maintain the Committee's financial reserve.

The Committee met on December 13, 2022, and unanimously recommended 2023 fiscal year expenditures of \$1,154,412 and an assessment rate of \$35 per ton of assessed

olives. In comparison, last year's budgeted expenditures were \$1,245,085. The assessment rate of \$35 is \$19 higher than the rate currently in effect. Producer receipts show a yield of 19,912 tons of assessable olives from the 2022 crop year, which is substantially less than the quantity of olives harvested in the 2021 crop year, in which 46,359 tons of assessable olives were produced.

Olives harvested in 2022 will be marketed over the course of the 2023 fiscal year, which begins on January 1, 2023. The 19,912 tons of assessable olives from the 2022 crop should generate \$696,920 in assessment revenue at the \$35 per ton assessment rate. The balance of funds needed to cover budgeted expenditures will come from interest income, Federal grants, and the Committee's financial reserve. The 2023 fiscal year assessment rate increase is appropriate to ensure the Committee has sufficient revenue to fund the recommended 2023 fiscal year budgeted expenditures. Funds in the reserve are expected to remain within the Order's requirement of no more than approximately one fiscal year's budgeted expenses.

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 large crop (2021) followed by a small crop (2022). For this assessment rate rule, the actual 2022 crop year receipts are used to determine the assessment rate for the 2023 fiscal year.

The major expenditures recommended by the Committee for the 2023 fiscal year include \$547,700 for program administration, \$193,000 for marketing activities, \$325,712 for research, and \$88,000 for inspection. Budgeted expenses for these items during the 2022 fiscal year were \$538,700; \$284,000; \$379,485; and \$42,900, respectively.

The assessment rate recommended by the Committee resulted from consideration of anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2022 crop year, and the amount in the Committee's financial reserve. Income derived from handler assessments and other revenue sources is expected to be adequate to cover budgeted expenses. The assessment rate established in this rulemaking will continue in effect indefinitely unless modified, suspended, or terminated by AMS 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS 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 AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final 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 800 producers of olives in the production area and 2 handlers subject to regulation under the Order. Small agricultural producers of olives are defined by the Small Business Administration (SBA) as those having annual olive receipts of less than \$3.5 million (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are less than \$34 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Because of the large year-to-year variation in California olive production, it is helpful to use two-year averages of seasonal average grower price when undertaking calculations relating to average grower revenue. The National Agricultural Statistics Service (NASS) reported season average grower prices of olives utilized for canning for 2020 and 2021 of \$1,060 and \$1,110 per ton, respectively, with a two-year average price of \$1,085.

The appropriate quantities to consider are the annual assessable olive quantities, which were 19,912 tons in 2022 and 43,336 tons in 2021, with two-year average production of 31,624 tons. Multiplying 31,624 tons by the two-year average grower price of \$1,085 yields a two-year average crop value of \$34.312 million. Dividing the crop value by the number of olive producers (800) yields calculated annual average revenue per producer of \$42,890, much less than SBA's size standard of \$3.5 million. Thus, the majority of olive producers may be classified as small entities.

Dividing the \$34.312 million average crop value by 2 (the number of handlers) equals \$17.156 million, which is the annual average olive crop value processed by each of the 2 handlers over the two-year period. Subtracting \$17.156 million average crop value from the large handler size threshold of \$34 million yields a difference of \$16.844 million. Dividing the \$16.844 million difference by \$17.156 average crop value processed by each of the handlers yields an average manufacturing margin of 98 percent

to be considered large handlers. A key question is whether 98 percent is a reasonable estimate of a manufacturing margin for the olive canning process.

A review of economic literature on canned food manufacturing margins found no recent published estimates. A series of Economic Research Service reports on cost components of farm to retail price spreads, published in the late 1970s and early 1980s, found that margins above crop value for a canned vegetable product were in the range of 76 to 85 percent. These margins are somewhat below the computed margin estimate of 98 percent to reach the \$34 million SBA threshold to be a large, canned olive handler. Although the studies are not recent, key observations are that canning technology has not changed significantly in that time period, but canning costs may have risen somewhat. Therefore, the conclusion to be drawn from these computations is that the two handlers are slightly below the large handler threshold of \$34 million in annual canned olive sales, using two-year average data, and assuming that the 2 handlers are about the same size.

In a large crop year, one or both handlers could be considered large handlers, depending on the proportion of the olive crop that each of the handlers processed. For example, the 2021 quantity of assessable olives was 43,336 tons, and half of that quantity was 21,668 tons. Multiplying that tonnage by the average grower price of \$1,085 per ton yields a crop value per handler estimate of \$23.51 million. To reach the \$34 million size threshold would mean canning costs of at least \$10.49 million, which would be a manufacturing margin of 45 percent ($\$10.49 / \23.51) – well below the range of canning margins shown above.

The contrasting examples presented here show that in terms of canned olive sales, the processors can be viewed as either being above or below the SBA large handler size threshold, depending on the assumptions used in alternative calculations.

This final rule increases the assessment rate collected from handlers for the 2023 and subsequent fiscal years from \$16 to \$35 per ton of assessable olives. The Committee

unanimously recommended 2023 expenditures of \$1,154,412 and an assessment rate of \$35 per ton. The increased assessment rate of \$35 is \$19 higher than the 2022 rate. The quantity of assessable olives harvested in the 2022 crop year was 19,912 tons, as compared to 46,359 tons in 2021. Olives are an alternate-bearing crop, with a large crop (2021) followed by a small crop (2022). Income derived from the \$35 per ton assessment rate, along with interest income, Federal grants, and funds from the authorized reserve, should be adequate to meet this fiscal year's budgeted expenditures.

The Committee's financial reserve is projected to be sufficient to partially fund 2023 fiscal year budgeted expenditures and remain within the requirements of § 932.40(a)(2) of the Order. The major expenditures recommended by the Committee for the 2023 fiscal year include \$547,700 for program administration, \$193,000 for marketing activities, \$325,712 for research, and \$88,000 for inspection. Budgeted expenses for these items during the 2022 fiscal year were \$538,700; \$284,000; \$379,485; and \$42,900 respectively. The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and decreased the budgeted expenses for research and marketing activities, while increasing the budget for administration and inspection program costs. Overall, the 2023 fiscal year budget of \$1,154,412 is \$90,673 less than the \$1,245,085 budgeted for the 2022 fiscal year.

Prior to arriving at the budget and recommended 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 decreased olive production. The assessment rate of \$35 per ton of assessable olives was derived by considering anticipated expenses, the relatively low volume of assessable olives, the current balance in the monetary reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021 crop year, the most recent crop year surveyed by NASS, was \$851 per ton. The quantity of assessable olives harvested during the 2022 crop year was 19,912 tons, which makes estimated total producer revenue \$16,945,112 (\$851 multiplied by 19,912 tons). Therefore, using the assessment rate of \$35 per ton, the assessment revenue for the 2023 fiscal year as a percentage of estimated total producer revenue is expected to be approximately 4.1 percent (\$35 multiplied by 19,912 tons divided by \$16,945,112 multiplied by 100).

This action increases 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, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The olive industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 13, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit comments on this 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 and Specialty Crops. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule will 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.

AMS 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 June 16, 2023 (88 FR 39374). Copies of the proposed rule were also mailed or sent via email to California olive handlers. A copy of the proposed rule was made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending July 17, 2023, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been 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: <https://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 recommendations submitted by the Committee and other available information, AMS has determined that this rule tends 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, the Agricultural Marketing Service amends 7 CFR part 932 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, 2023, an assessment rate of \$35.00 per ton is established for California olives.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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