

2. In Subpart—Control Committee Rules and Regulations, under the undesignated center heading “Definitions”, a new § 927.103 is added as follows:

**§ 927.103 Organically produced pears.**

*Organically produced pears* means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

3. Section 927.236 is revised to read as follows:

**§ 927.236 Assessment rate.**

On and after July 1, 2001, an assessment rate of \$0.49 per standard box of conventionally and organically produced pears and, in addition, a supplemental assessment rate of \$0.03 per standard box of Beurre d'Anjou variety pears, excluding organically produced pears, is established for the Winter Pear Control Committee.

Dated: January 31, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–2849 Filed 2–5–02; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

[Docket No. FV02–932–1 IFR]

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

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2002 and subsequent fiscal years from \$27.90 to \$10.09 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1, 2002, and ends December 31, 2002. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective: February 7, 2002. Comments received by April 8, 2002, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket 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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the “order.” 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 Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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 order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives

beginning January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 Committee for the 2002 and subsequent fiscal years from \$27.90 per ton to \$10.09 per ton of olives.

The California olive 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 of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for 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.

For the 2001 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year 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 11, 2001, and unanimously recommended fiscal year 2002 expenditures of \$1,428,585 and an assessment rate of \$10.09 per ton of olives. In comparison, last year's budgeted expenditures were \$1,348,242 and the assessment rate was \$27.90. The assessment rate of \$10.09 is

\$17.81 lower than the rate currently in effect.

Expenditures recommended by the Committee for the 2002 fiscal year include \$811,935 for marketing development, \$339,650 for administration, \$250,000 for research, and \$27,000 for capital expenditures. Budgeted expenses for these items in 2001 were \$596,415, \$343,490, \$408,337, and \$0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in assessable tonnage makes possible the lower assessment rate.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual tonnage, and additional pertinent factors. As mentioned earlier olive shipments for the year are estimated at 123,439 for fiscal year 2002. This compares to an assessable tonnage of 46,374 for fiscal year 2001. The significant tonnage increase in fiscal year 2002, due in part to the alternate-bearing nature of olives, has made it possible for the Committee to decrease the assessment rate from \$27.90 to \$10.09 per ton. 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—approximately one fiscal periods' expenses, or \$1,428,585 (\$932.40).

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 is effective 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 will be undertaken as necessary. The Committee's 2002 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 business 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and approximately 3 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

The majority of olive producers may be classified as small entities. One of the handlers may be classified as a small entity. Thus, the majority of handlers may be classified as large entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal years from \$27.90 to \$10.09 per ton of olives. The Committee unanimously recommended 2002 expenditures of \$1,428,585 and an assessment rate of \$10.09 per ton. The assessment rate of \$10.09 is \$17.81 lower than the 2001 rate. The quantity of assessable olives for the 2002 fiscal year is estimated at 123,439 tons. Thus, the \$10.09 rate should provide \$1,245,500 in assessment income and

should be adequate, when combined with funds from the authorized reserve and interest income to meet this year's expenses.

The expenditures recommended by the Committee for the 2002 fiscal year include \$811,935 for marketing development, \$339,650 for administration, \$250,000 for research, and \$27,000 for capital expenditures. Budgeted expenses for these items in 2001 were \$596,415, \$343,490, \$408,337, and \$0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in tonnage makes the lower assessment rate possible.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, and Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry. The assessment rate of \$10.09 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2002 season is estimated to be approximately \$502.27 per ton of olives. Therefore, the estimated assessment revenue for the 2002 fiscal year as a percentage of total grower revenue will be approximately 2 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 California 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, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action 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 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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber 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, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002 fiscal year began on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) the action decreases the assessment rate for assessable olives beginning with the 2002 fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely

received will be considered prior to finalization of 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 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, 2002, an assessment rate of \$10.09 per ton is established for California olives.

Dated: January 31, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–2847 Filed 2–5–02; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV01–948–2 FIR]

#### Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, without change, an interim final rule which continues to suspend the assessment rate established for the Colorado Potato Administrative Committee, Area III (Committee) for the 2001–02 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period began July 1, 2001, and ends June 30, 2002. The assessment rate will remain suspended until an appropriate rate is reinstated.

**EFFECTIVE DATE:** March 8, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” 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 USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 1999–00 fiscal period, an assessment rate of \$0.02 per hundredweight of potatoes handled was fixed by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action continues to suspend the assessment rate for the 2001–02 fiscal period, which began on July 1, 2001, and will continue in effect until reinstated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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