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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. AMS-FV-06-0225; FV07-932-1 FR]

#### Olives Grown in California; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Olive Committee (committee) for the 2007 and subsequent fiscal years from \$11.03 to \$47.84 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective April 13, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer R. Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or e-mail: [Jennifer.Garcia@usda.gov](mailto:Jennifer.Garcia@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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 would be applicable to all assessable olives beginning on January 1, 2007, 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 increases the assessment rate established for the committee for the 2007 and subsequent fiscal years from \$11.03 to \$47.84 per ton of assessable olives from the applicable crop years.

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 fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with 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 discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006 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 12, 2006, and unanimously recommended 2007 fiscal year expenditures of \$950,396 and an assessment rate of \$47.84 per ton of assessable olives. In comparison, the budgeted expenditures for fiscal year 2006 were \$1,301,121. The assessment rate of \$47.84 is \$36.81 higher than the rate currently in effect. The committee recommended the higher assessment rate because the 2006-07 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are only 16,270 tons, which compares to 114,761 tons in 2005-06. Unusual weather conditions, including a wet winter and very hot summer, contributed to a substantially smaller crop. The committee also plans to use available reserve funds to help meet its 2007 expenses.

The major expenditures recommended by the committee for the 2007 fiscal year include \$365,775 for research, \$332,450 for marketing activities, and \$252,171 for administration. Budgeted expenditures for these items in 2006 were \$210,000, \$800,700, and \$290,421, respectively. The committee recommended a larger

2007 research budget so it can continue its ongoing olive fly research and research to develop a mechanical olive harvesting method. The 2007 marketing program would be scaled back. Recommended decreases in the administrative budget are due mainly to tighter budgeting in several areas.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2006–07 crop year, and additional pertinent factors. Actual assessable tonnage for the 2007 fiscal year is expected to be lower than the 2006–07 crop receipts of 16,270 tons reported by the CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments, along with funds from the committee's authorized reserve and interest income, would be adequate to cover budgeted expenses. Funds in the reserve would be kept within the maximum permitted by the order of approximately one fiscal year's expenses (§ 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 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 will be undertaken as necessary. The committee's 2007 budget and those 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), 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 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 850 producers of olives in the production area and 2 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 \$6,500,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2007 and subsequent fiscal years from \$11.03 to \$47.84 per ton of assessable olives. The committee unanimously recommended 2007 expenditures of \$950,396 and an assessment rate of \$47.84 per ton. The proposed assessment rate of \$47.84 is \$36.81 higher than the 2006 rate. The higher assessment rate is necessary because assessable olive receipts for the 2006–07 crop year were reported by the CASS to be 16,270 tons, compared to 114,761 tons for the 2005–06 crop year. Actual assessable tonnage for the 2007 fiscal year is expected to be lower because some of the receipts may be diverted by handlers to exempt outlets on which assessments are not paid.

Income generated from the \$47.84 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve would be kept within the maximum permitted by the order of about one fiscal year's expenses (§ 932.40).

Expenditures recommended by the committee for the 2007 fiscal year include \$365,775 for research, \$332,450 for marketing activities, and \$252,171 for administration. Budgeted expenses for these items in 2006 were \$210,000, \$800,700, and \$290,421 respectively. The committee recommended a larger 2007 research budget so it can continue its olive fly research projects and research to develop a mechanical olive harvesting method. The 2007 marketing program would be scaled back. Recommended decreases in the

administrative budget are due mainly to tighter budgeting in several areas.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Market Development, and Research Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry and the reduced olive production. The assessment rate of \$47.84 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives and additional pertinent factors.

A review of historical information indicates that the grower price for the 2006–07 crop year was approximately \$960.57 per ton for canning fruit and \$344.56 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 87 percent of a ton of olives are canning fruit sizes and 9 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 16,270 total tons of canning and limited-use sizes would be \$14,704,092 given the current grower prices for those sizes. Therefore, with an assessment rate increased from \$11.03 to \$47.84, the estimated assessment revenue is expected to be approximately 5 percent of grower revenue.

This action increases 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 will be offset by the benefits derived by the operation of the marketing order. 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 12, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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.

The 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 rule.

A proposed rule concerning this action was published in the **Federal Register** on March 7, 2007 (72 FR 10091). Copies of the proposed rule were also mailed or sent via facsimile to all olive handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 22, 2007, was provided for interested persons to respond to the proposal. No comments were received.

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 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 2007 fiscal year began on January 1, 2007, 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 committee needs sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was discussed by the committee and unanimously recommended at a public meeting, and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed 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, 2007, an assessment rate of \$47.84 per ton is established for California olives.

Dated: April 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 07–1832 Filed 4–10–07; 1:10 pm]

**BILLING CODE 3410–02–P**

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket Nos. AMS–FV–07–0039; FV07–985–2 IFR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2006–2007 Marketing Year

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

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

**SUMMARY:** This rule revises the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year. This rule increases the Scotch spearmint oil salable quantity from 878,205 pounds to 2,984,817 pounds, and the allotment percentage from 45 percent to 153 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,161,260 pounds to 1,205,208 pounds, and the allotment percentage from 53 percent to 55 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2006, through May 31, 2007; comments received by June 11, 2007 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 Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FURTHER INFORMATION CONTACT:** Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail:

[Susan.Hiller@usda.gov](mailto:Susan.Hiller@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

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 Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), 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 provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Scotch and Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 2006–2007 marketing year, which ends on May 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.