

agent or representative of the importer or owner of the cut flowers. The importer, owner, or agent or representative of the importer or owner must, within the time specified in the PPQ Form 523 and at his or her own expense, destroy the cut flowers, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments, clean, or apply other safeguards to the cut flowers as prescribed by the inspector on the PPQ Form 523. Further, if the importer, owner, or agent or representative of the importer or owner fails to follow the conditions on PPQ form 523 by the time specified on the form, APHIS will arrange for destruction of the cut flowers, and the importer, owner, or agent or representative of the importer or owner will be responsible for all costs incurred. Cut flowers that have been cleaned or treated must be made available for further inspection, cleaning, and treatment at the option of the inspector at any time and place indicated by the inspector before the requirements of this subpart will have been met. Neither the Department of Agriculture nor the inspector may be held responsible for any adverse effects of treatment on imported cut flowers.

(c) *Fumigation for agromyzids.* (1) Cut flowers imported from any country or locality and found upon inspection to be infested with agromyzids (insects of the family Agromyzidae) must be fumigated at the time of importation with methyl bromide in accordance with paragraph (c)(2) of this section, with the following exceptions:

(i) Fumigation will not be required for cut flowers imported from Canada (including Labrador and Newfoundland) or Mexico because of the finding of agromyzids.

(ii) Fumigation will not be required for cut flowers of *Chrysanthemum* spp. imported from Colombia or the Dominican Republic because of the finding of agromyzids, when such agromyzids are identified by an inspector to be only agromyzids of the species *Liriomyza trifolii* (Burgess).

(2) *Fumigation schedules.* Fumigation of cut flowers for agromyzids (insects of the family Agromyzidae) must consist of fumigation with methyl bromide at normal atmospheric pressure in a chamber or under a tarpaulin in accordance with one of the following schedules:

1½ lbs. per 1,000 cu. ft. for 2 hours at 80–90 °F.

(19 oz. concentration at first ½ hour)  
(12 oz. concentration at 2 hours); or

2 lbs. per 1,000 cu. ft. for 2 hours at 70–79 °F.

(24 oz. concentration at first ½ hour)

(16 oz. concentration at 2 hours); or

2½ lbs. per 1,000 cu. ft. for 2 hours at 60–69 °F.

(30 oz. concentration at first ½ hour)

(20 oz. concentration at 2 hours); or

3 lbs. per 1,000 cu. ft. for 2 hours at 50–59 °F.

(36 oz. concentration at first ½ hour)

(24 oz. concentration at 2 hours); or

3½ lbs. per 1,000 cu. ft. for 2 hours at 40–49 °F.

(41 oz. concentration at first ½ hour)

(27 oz. concentration at 2 hours)

**Note:** There is a possibility that some cut flowers could be damaged by such fumigation.

(d) *Refusal of entry.* If an inspector finds that imported cut flowers are so infested with a plant pest or infected with disease that, in the judgment of the inspector, they cannot be cleaned or treated, or if they contain soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

#### § 319.74–3 Importations by the Department.

The U.S. Department of Agriculture may import cut flowers for experimental or scientific purposes under such conditions and restrictions as the Administrator may prescribe to prevent the dissemination of plant pests.

#### § 319.74–4 Costs and charges.

The Animal and Plant Health Inspection Service, U.S. Department of Agriculture, will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty (provisions relating to costs for other services of an inspector are contained in 7 CFR part 354). The importer, owner, or agent or representative of the importer or owner of cut flowers is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including the costs of any labor or chemicals, packing materials, or other supplies required.

Done in Washington, DC, this 21st day of January 1999.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–1918 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV99–932–1 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate from \$17.10 to \$26.18 per ton of olives established for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1999 and subsequent fiscal years. The Committee is responsible for local administration of 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 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by March 1, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket\_clerk@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.

#### FOR FURTHER INFORMATION CONTACT:

Diane Purvis, Marketing Assistant, and Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**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 marketing agreement and order are 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 (Department) 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 on January 1, 1999, 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 the Secretary 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 the Secretary 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 the Secretary'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 would increase the assessment rate established for the Committee for the 1999 and subsequent fiscal years from \$17.10 per ton to \$26.18 per ton of olives.

The California olive marketing order provides authority for the Committee, with the approval of the Department, 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 1998 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 10, 1998, and unanimously recommended 1999 expenditures of \$1,845,185 and an assessment rate of \$26.18 per ton of olives. In comparison, last year's budgeted expenditures were \$1,750,000. The assessment rate of \$26.18 is \$9.08 higher than the rate currently in effect. A higher assessment rate is needed because:

(1) Assessable tonnage is down for the second year in a row due in large part this crop year to adverse conditions created by the weather phenomenon El Niño. Assessable tonnage in 1996 totaled 144,075 tons, in 1997 it totaled 85,585 tons, and in 1998 the assessable tonnage totaled 67,990 tons; and

(2) Rather than reduce 1999 expenditures, the Committee determined that more funds are needed to continue the development of an improved mechanical olive harvester that can efficiently harvest most orchard configurations. The California olive industry recognized that it needs to make cutting harvesting costs a top priority if it is to remain competitive with imports. Consequently, after considerable discussion, the Committee recommended increasing the \$52,000 1999 Research Fund initially suggested by Committee members by an additional \$250,000. The additional \$250,000 is to be used specifically for the purpose of further development of a mechanical harvester that can be more effectively utilized by growers throughout the California olive industry while at the same time reducing harvesting costs.

The following table compares major budget expenditure recommendations for the 1999 fiscal year with those from last year:

Budget expenditure	1998	1999
Administration ...	\$357,900	\$346,485
Research .....	50,000	302,000
Market Development .....	1,308,500	1,190,500

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual receipts of olives, and additional pertinent factors. The quantity of assessable olives for the 1999 fiscal year is 67,990 tons which should provide \$1,779,978 in assessment income. Income derived from handler assessments, interest, and carryover of reserve funds would be adequate to cover budgeted expenses. Funds in the reserve (currently \$316,409) would be kept within the maximum permitted by the order (approximately one fiscal year's expenses, \$932.40).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would 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 1999 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

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 3 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999 and subsequent fiscal years from \$17.10 per ton to \$26.18 per ton of olives. The Committee recommended 1999 expenditures of \$1,845,185 and an assessment rate of \$26.18 per ton. The proposed assessment rate of \$26.18 is \$9.08 higher than the 1998 rate. The quantity of assessable olives for the 1999 fiscal year is 67,990 tons. Thus, the \$26.18 rate should provide \$1,779,978 in assessment income and be adequate to meet this year's budgeted expenses, when combined with funds from the authorized reserve and interest income.

The following table compares major budget expenditure recommendations for the 1999 fiscal year with those from last year:

Budget expenditure	1998	1999
Administration ...	\$357,900	\$346,485
Research .....	50,000	302,000
Market Development .....	1,308,500	1,190,500

A higher assessment rate is needed for 1999 because:

(1) Assessable tonnage is down for the second year in a row due in large part this crop year to adverse conditions created by the weather phenomenon El Niño. Assessable tonnage in 1996 totaled 144,075 tons, in 1997 it totaled 85,585 tons, and in 1998 the assessable tonnage totaled 67,990 tons; and

(2) Rather than reduce 1999 expenditures, the Committee determined that more funds are needed to continue the development of an improved mechanical olive harvester that can efficiently harvest most orchard configurations. The California olive industry recognized that it needs to

make cutting harvesting costs a top priority if it is to remain competitive with imports. Consequently, after considerable discussion, the Committee recommended increasing the \$52,000 1999 Research Fund initially suggested by Committee members by an additional \$250,000. The additional \$250,000 is to be used specifically for the purpose of further development of a mechanical harvester that can be more effectively utilized by growers throughout the California olive industry while at the same time reducing harvesting costs.

The Committee reviewed and unanimously recommended 1999 expenditures of \$1,845,185 which included the \$250,000 increase in Research for further development of an improved mechanical olive harvester. To finance this additional research allotment, the Committee considered reducing the Market Development budget item by amounts ranging from \$100,000 to \$309,530. The prevailing opinion was that the money allocated for 1999 Market Development recommended by the Marketing Subcommittee remain the same (\$1,190,500) as initially suggested, which is \$118,000 less than budgeted for 1998. The Committee members believed that the Administrative Budget had already been reduced as low as possible (\$11,415 less than for 1998). The only other alternative was to increase the assessment rate. The assessment rate of \$26.18 per ton of assessable olives was then derived by considering anticipated expenses, actual receipts of olives, and additional pertinent factors.

Based on a review of historical and preliminary marketing and price information, grower revenue for the 1998-99 crop year (August 1 through July 31) is estimated to be approximately \$39,500,000. Therefore, the estimated assessment revenue of \$1,779,978 for the 1999 fiscal year will be approximately 4.5 percent of grower revenue.

This action would increase 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 would 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 10,

1998, 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 proposed rule would impose no additional reporting or recordkeeping requirements on 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1999 fiscal year began on January 1, 1999, and the order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (3) all three handlers are represented on the Committee and participated in deliberations, (4) and all 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.

#### 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 proposed to be revised to read as follows:

##### § 932.230 Assessment rate.

On and after January 1, 1999, an assessment rate of \$26.18 per ton is established for California olives.

Dated: January 22, 1999.

**Robert C. Keeney,**  
Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-1969 Filed 1-27-99; 8:45 am]

BILLING CODE 3410-02-P