

the crop year and no fruit has been harvested. The producer elected the 75 percent coverage level and has a 100 percent share. The amount of insurance is \$1,180 per acre, based on the 75 percent coverage level, for the citrus crop, fruit type, and age of trees. The amount of potential production is 24,530 boxes and the amount of damaged production is 17,171 boxes.

The loss would be calculated as follows:

1. 55 acres × \$1,180 = \$64,900 amount of insurance for the unit;

2. 17,171 ÷ 24,530 = 70 percent average percent of damage;

3. 70 percent damage – 25 percent deductible (100 percent – 75 percent) = 45 percent;

4. 45 percent ÷ 75 percent = 60 percent adjusted damage; and

5. 60 percent × \$64,900 = \$38,940 indemnity.

(c) Citrus fruit crops IV, V, VII, and VIII that are seriously damaged by freeze, as determined by a fresh-fruit cut of a representative sample of fruit in the unit in accordance with the applicable provisions of the State of Florida Citrus Fruit Laws, or contained in standards issued by FCIC, and that are not or could not be marketed as fresh fruit, will be considered damaged to the following extent:

(1) If less than 16 percent of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 50 percent damaged, except that:

(i) For tangerines of Citrus IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(ii) Citrus IV (except tangerines), V, VII, and VIII, if it is determined that the juice loss in the fruit exceeds 50 percent, such percent will be considered the percent of damage.

(d) Notwithstanding the provisions of section 10(c) of these crop provisions as to citrus fruit of Citrus IV, V, VII, and VIII, in any unit that is mechanically separated using the specific-gravity (floatation) method into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. However, the 50 percent limitation on mechanically separated, freeze-damaged fruit will not apply to tangerines of Citrus IV.

(e) Any citrus fruit of Citrus I, II, III, and VI damaged by freeze, but that can be processed into products for human consumption, will be considered as marketable for juice. The percent of

damage will be determined by relating the juice content of the damaged fruit to:

(1) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(2) The following juice content, if acceptable records are not furnished:

(i) Citrus I—52 pounds of juice per box;

(ii) Citrus II—54 pounds of juice per box;

(iii) Citrus III—45 pounds of juice per box; and

(iv) Citrus VI—43 pounds of juice per box;

(f) Any individual citrus fruit on the ground that is not collected and marketed will be considered as 100 percent damaged if the damage was due to an insured cause.

(g) Any individual citrus fruit that is unmarketable either as fresh fruit or as juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered as 100 percent damaged.

(h) Individual citrus fruit of Citrus IV, V, VII, and VIII, that are unmarketable as fresh fruit due to serious damage from hail as defined in the applicable United States Standards for Grades of Florida fruit, or wind damage from a hurricane, tornado or other excess wind storms that results in the fruit not meeting the standards for packing as fresh fruit, will be considered 100 percent damaged.

#### 11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on January 31, 2008.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. AMS–FV–07–0155; FV08–932–1 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 2008 and subsequent fiscal years from \$47.84 to \$15.60 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 February 8, 2008. Comments received by April 7, 2008 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>. 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.regulations.gov>.

**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: [Jen.Garcia@usda.gov](mailto:Jen.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 will be applicable to all assessable olives beginning on January 1, 2008, 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 2008 and subsequent fiscal years from \$47.84 to \$15.60 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 2007 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 5, 2007, and unanimously recommended 2008 fiscal year expenditures of \$1,588,552 and an assessment rate of \$15.60 per ton of assessable olives. In comparison, last year's budgeted expenditures were \$965,396. The assessment rate of \$15.60 is \$32.24 lower than the rate currently in effect. The committee recommended the lower assessment rate because the 2007–08 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are 108,059 tons, which compares to 16,270 tons in 2006–07. The 2006–07 crop was unusually small in size due to unusual weather conditions.

The major expenditures recommended by the committee for the 2008 fiscal year include \$500,000 for research, \$750,000 for marketing activities, and \$288,552 for administration. Budgeted expenditures for these items in 2007 were \$365,775, \$347,450, and \$252,171, respectively. The committee recommended a larger 2008 research budget so it can expand its ongoing research to develop a mechanical olive harvesting method. The committee also recommended an increase in the 2008 marketing budget to allow for a restructuring of its marketing program, which will focus on a new Web site and trade advertisements. Recommended increases in the administrative budget are due mainly to a necessary office move and increases in employee benefits. Another \$50,000 is budgeted for 2008 for a possible inspection-related research project.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2007–08 crop year, and additional pertinent factors. Actual assessable tonnage for the 2008 fiscal year is expected to be higher than the 2007–08 crop receipts of 108,059 tons reported by 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 is effective 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 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 2008 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.

There are approximately 745 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 decreases the assessment rate established for the committee and collected from handlers for the 2008 and subsequent fiscal years from \$47.84 to \$15.60 per ton of assessable olives. The committee unanimously recommended 2008 expenditures of \$1,558,552 and an assessment rate of \$15.60 per ton. The proposed assessment rate of \$15.60 is \$32.24 lower than the 2007 rate. The lower assessment rate is necessary because assessable olive receipts for the 2007–08 crop year were reported by CASS to be 108,059 tons, compared to 16,270 tons for the 2006–07 crop year. Actual assessable tonnage for the 2008 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 \$15.60 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 2008 fiscal year include \$500,000 for research, \$750,000 for marketing activities, and \$288,552 for administration. Budgeted expenditures for these items in 2007 were \$365,775, \$332,450, and \$252,171, respectively. The committee recommended a larger 2008 research budget so it can expand its ongoing research to develop a mechanical olive harvesting method. The committee also recommended an increase in the 2008 marketing budget to allow for a restructuring of its marketing program, which will focus on a new Web site and trade advertisements. Recommended increases in the administrative budget are due mainly to a necessary office move and increases in employee benefits. Another \$50,000 is budgeted for a possible inspection-related research project.

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. The assessment rate of \$15.60 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 2007–08 crop year was approximately \$1,007.78 per ton for canning fruit and \$378.51 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 81 percent of a ton of olives are canning fruit sizes and 18 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 108,059 total tons of canning and limited-use sizes would be \$95,322,099 given the current grower prices for those sizes. Therefore, the assessment revenue for the 2007–08 fiscal year is expected to be approximately 2 percent of grower revenue.

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 5, 2007, 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.

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 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 impractical, 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 2008 fiscal year began on January 1, 2008, 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; 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

Olives, Marketing agreements, 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, 2008, an assessment rate of \$15.60 per ton is established for California olives.

Dated: February 1, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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