

Done in Washington, DC, this 31<sup>st</sup> day of March 2010.

**Gregory Parham**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010-9779 Filed 4-27-10; 8:45 am]

BILLING CODE 3410-34-S

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

[Doc. No. AMS-FV-09-0089; FV10-932-1  
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 2010 and subsequent fiscal years from \$28.63 to \$44.72 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 Date: April 29, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey S. Smutny, 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: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.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, 2010, 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 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 2010 and subsequent fiscal years from \$28.63 to \$44.72 per ton of olives handled.

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 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 2009 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 15, 2009, and unanimously recommended 2010 fiscal year expenditures of \$929,923 and an assessment rate of \$44.72 per ton of olives. In comparison, last year's budgeted expenditures were \$1,482,349. The assessment rate of \$44.72 is \$16.09 higher than the rate currently in effect. The Committee recommended the higher assessment rate because the 2009-10 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are only 22,150 tons, which compares to 49,067 tons in 2008-09. Unusual weather conditions, including untimely temperatures that fell below freezing, contributed to a substantially smaller crop. The Committee also plans to use available reserve funds to help meet its 2010 expenses.

The major expenditures recommended by the Committee for the 2010 fiscal year include \$300,000 for research, \$255,000 for marketing activities, and \$324,923 for administration. Budgeted expenses for these items in 2009 were \$495,000, \$627,800, and \$359,549, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2009-10 crop year, and additional pertinent factors. Actual assessable tonnage for the 2010 fiscal year is expected to be lower than the 2009-10 crop receipts of 22,150 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 interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve will 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 2010 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), 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.

There are approximately 1,000 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 \$7,000,000.

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 2010 and subsequent fiscal years from \$28.63 to \$44.72 per ton of assessable olives. The Committee unanimously recommended 2010 expenditures of \$929,923 and an assessment rate of \$44.72 per ton. The assessment rate of \$44.72 is \$16.09 higher than the 2009 rate. The higher assessment rate is necessary because assessable olive receipts for the 2009–10 crop year were reported by the CASS to be 22,150 tons, compared to 49,067 tons for the 2008–09 crop year. Actual assessable tonnage for the 2010 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 \$44.72 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 should be kept within the maximum permitted by the order of about one fiscal year's expenses (\$ 932.40).

The major expenditures recommended by the Committee for the 2010 fiscal year include \$300,000 for research, \$255,000 for marketing activities, and \$324,923 for administration. Budgeted expenses for these items in 2009 were \$495,000, \$627,800, and \$359,549 respectively. The Committee recommended decreases in all major expense categories due to the huge decrease in assessable crop volume as reported by the CASS.

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 \$44.72 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 and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2009–10 crop year was approximately \$1,193.94 per ton for canning fruit and \$375.01 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 91 percent of a ton of olives are canning fruit sizes and 5 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 22,150 total tons of canning and limited-use sizes would be \$24,321,145 given the current grower prices for those sizes. Therefore, with an assessment rate increased from \$28.63 to \$44.72, the estimated assessment revenue is expected to be approximately 4 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 are 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 15, 2009, 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on March 3, 2010 (75 FR 9536). Copies of the proposed rule were also mailed or sent via facsimile to all California olive handlers. Finally, the proposal was made available through the Internet by USDA and the Office of **Federal Register**. A 30-day comment period ending April 2, 2010, 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter 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 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

handlers have already received 2010 olives from growers, the fiscal year began on January 1, 2010, and the assessment rate applies to all olives received during the 2010 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 932

Olive, 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, 2010, an assessment rate of \$44.72 per ton is established for California olives.

Dated: April 22, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-9827 Filed 4-27-10; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 996

[Docket No. AMS-FV-10-0030, FV10-996-610 Review]

##### Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States; Section 610 Review

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

**ACTION:** Notice of review and request for comments.

**SUMMARY:** This document announces that the Agricultural Marketing Service (AMS) plans to review 7 CFR part 996, Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this notice must be received by June 28, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this notice of review. 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 may be viewed at: <http://www.regulations.gov>. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

##### **FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., Fresno, California 93721; Telephone: (559) 487-5110; Fax: (559) 487-5906; or E-mail:

[Martin.Engeler@ams.usda.gov](mailto:Martin.Engeler@ams.usda.gov); or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734-5243; Fax: (301) 734-5275; or E-mail: [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States (Standards), as amended (7 CFR Part 996), were established pursuant to Public Law 107-171, the Farm Security and Rural Investment Act of 2002 (Farm Bill). The Standards regulate the quality and handling of domestic and imported peanuts marketed in the United States.

AMS published in the **Federal Register** on August 14, 2003 (68 FR 48574), its plan to review certain regulations, including the Standards, under criteria contained in section 610 of the RFA (5 U.S.C. 601-612). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

The purpose of the review will be to determine whether the Standards should be continued without change, amended, or rescinded, consistent with

the stated objectives of applicable statutes, to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the Standards; (2) the nature of complaints or comments received from the public concerning the Standards; (3) the complexity of the Standards; (4) the extent to which the Standards overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the Standards have been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the areas affected by the Standards.

Written comments, views, opinions, and other information regarding the impact the Standards have on small businesses are invited.

Dated: April 22, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-9833 Filed 4-27-10; 8:45 am]

**BILLING CODE P**

#### DEPARTMENT OF ENERGY

##### 10 CFR Part 430

[Docket Number EERE-2007-BT-TP-0013]

**RIN 1904-AB72**

##### **Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps; Correction**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This document contains a technical correction to the final rule regarding the test procedures for general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps, which was published in the **Federal Register** on July 6, 2009. In that final rule, the U.S. Department of Energy (DOE) adopted amendments to its test procedure regulations for the above-specified lamps. However, due to a drafting error, part of the original wording was inadvertently removed from the DOE test procedure regulations in the Code of Federal Regulations (CFR). This final rule addresses this issue and restores the correct and complete language to the regulations.