

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 932**[Doc. No. AMS-FV-11-0093; FV12-932-1
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 2012 and subsequent fiscal years from \$16.61 to \$31.32 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:* August 28, 2012.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist or Kurt J. Kimmel, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Jerry.Simmons@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, 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 Email: Laurel.May@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, 2012, 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 2012 and subsequent fiscal years from \$16.61 to \$31.32 per ton of assessable 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 2011 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, 2011, and unanimously recommended 2012 expenditures of \$1,197,291 and an assessment rate of \$31.32 per ton of

assessable olives. Olives are an alternate year bearing crop. Olive growers and handlers are accustomed to wide swings in crop yields and assessments from year to year. In comparison, last year's budgeted expenditures were \$2,203,909. The assessment rate of \$31.32 is \$14.71 higher than the rate currently in effect.

The Committee recommended the higher assessment rate because of a substantial decrease in the assessable olive volume for the 2012 fiscal year. The olive volume available for fiscal year 2011 as reported by the California Agricultural Statistics Service (CASS) is 26,944 tons, which compares to 167,000 tons reported for the 2010 fiscal year. The reduced crop is due to olives being an alternate year bearing fruit. The Committee also plans to use available reserve funds to help meet its 2012 expenses.

The major expenditures recommended by the Committee for the 2012 fiscal year include \$333,791 for research, \$480,000 for marketing activities, \$50,000 for inspection equipment development, and \$333,500 for administration. Budgeted expenses for these items in 2011 were \$1,093,009, \$700,000, \$75,000 and \$335,900, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2011 crop year, and additional pertinent factors. Actual assessable tonnage for the 2012 fiscal year is expected to be lower than the 2011 crop receipts of 167,000 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 would 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 2012 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) (5 U.S.C. 601–612), 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 industry and CASS, the average grower price for 2011 was approximately \$798 per ton and total grower production was around 26,944 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than \$750,000. Thus, 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 2012 and subsequent fiscal years from \$16.61 to \$31.32 per ton of assessable olives. The Committee unanimously recommended 2012 expenditures of \$1,197,291 and an assessment rate of \$31.32 per ton. The

higher assessment rate is necessary because assessable olive receipts for the 2012 fiscal year were reported by the CASS to be 26,944 tons, compared to 167,000 tons for the 2011 fiscal year. Actual assessable tonnage for the 2012 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 derived from the \$31.32 per ton assessment rate along with funds from the authorized reserve and interest income should be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2012 fiscal year include \$333,791 for research, \$480,000 for marketing activities, \$50,000 for inspection equipment development, and \$333,500 for administration. Budgeted expenses for these items in 2011 were \$1,093,009, \$700,000, \$75,000 and \$335,900, 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, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the reduced olive production. The assessment rate of \$31.32 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 grower price could range between approximately \$1,000 per ton and \$1,200 per ton of olives. Therefore, the estimated assessment revenue for the 2012 fiscal year as a percentage of total grower revenue could range between 2.6 and 3.1 percent.

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's 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, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they will be submitted to OMB for approval.

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 June 5, 2012 (77 FR 33104). 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 30-day comment period ending July 5, 2012, 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: www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May 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 the 2012 fiscal year olive crop from growers, the fiscal year began January 1, 2012, and the assessment rate applies to all California olives handled during the 2012 fiscal year and subsequent fiscal years. 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

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, 2012, an assessment rate of \$31.32 per ton is established for California olives.

Dated: August 21, 2012.

Ruihong Guo,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Doc. No. AMS–FV–09–0064; FV09–999–1
FR]

Specialty Crops; Import Regulations; New Pistachio Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a minimum quality regulation for lots of pistachios imported into the United States. The regulation specifies maximum aflatoxin tolerance levels as well as mandatory aflatoxin testing and certification requirements. These import quality requirements are the same as or comparable to those in effect for the

domestically produced commodity. Under this regulation, aflatoxin levels in imported pistachios may not exceed 15 parts per billion (ppb), as certified by aflatoxin inspection certificates issued by an accredited laboratory. This action is intended to assure consumers that all pistachios offered for sale in the United States meet the same aflatoxin standards, thus promoting high quality product in the market place and fostering consumer satisfaction.

DATES: *Effective Date:* September 26, 2012.

FOR FURTHER INFORMATION CONTACT:

Laurel May or Kathleen Finn, Marketing Order and Agreement Division, 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 Email: Laurel.May@ams.usda.gov or Kathy.Finn@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May at the above mentioned address.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” which provides that whenever the grade, size, quality, or maturity of certain specified commodities, including pistachios, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities. To ensure that these requirements are met, the Act also authorizes the Department of Agriculture (USDA) to perform inspections and related functions such as commodity sampling, and to issue inspection certificates for such imported commodities.

USDA is issuing this rule in conformance with Executive Order 12866.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule adds a new § 999.600 under 7 CFR part 999—Specialty Crops; Import Regulations, and establishes quality requirements for maximum aflatoxin tolerance levels and mandatory testing and certification requirements for pistachios offered for importation into the United States. These quality requirements for imported pistachios are the same as or

comparable to those established for pistachios grown in California, Arizona, and New Mexico under Marketing Agreement and Order No. 983 (7 CFR part 983) (order), both as amended.

This final rule also revises § 999.500, which specifies safeguard procedures for the importation of walnuts and dates that are exempt from § 8e regulations. This section is revised to include safeguard procedures for the importation of pistachios intended for exempted purposes.

The order prohibits the shipping of pistachios for domestic human consumption that do not meet the quality requirements for aflatoxin levels in the nuts. Such quality requirements specify that aflatoxin levels may not exceed the maximum tolerance of 15 ppb. Pistachios that fail to meet these requirements must be reworked and retested, or disposed of as specified in the order. This regulation was designed to ensure that only high quality pistachios containing low levels of aflatoxin are shipped, thus promoting high quality product in the market place and fostering consumer satisfaction.

The order, which was established for California pistachios in 2004, was recently amended to include the states of Arizona and New Mexico. Pistachios grown in California, Arizona, and New Mexico represent over 99 percent of the U.S. domestic production, and 98 percent of the domestic consumption. Thus, almost all domestically produced pistachios are regulated under Marketing Order No. 983. There is no other Federal marketing order in effect for pistachios produced in the United States.

According to USDA’s Foreign Agricultural Service (FAS), Iran is typically the world’s largest pistachio producer, followed by the U.S. and Turkey, although Syria’s production has increased in recent years. During the three most recent crop years (September through August) for which complete data is available, 2007–08 through 2009–10, the production averages in millions of pounds (inshell basis) for Iran, the U.S., Turkey, and Syria were approximately 386, 350, 120, and 141, respectively.

Historically, the bulk of U.S. pistachio imports have come from Turkey and Iran, although Iranian imports have been prohibited since July 2010. The remainder comes from other countries, including Italy, China, Switzerland, France, Australia, Hong Kong, and Israel. Imported pistachios may be inshell or shelled. According to FAS, the U.S. imported an average of approximately 1.7 million pounds of pistachios (inshell basis) annually.