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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV01-932-1 IFR]

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

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

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

**SUMMARY:** This rule increases the assessment rate established for the California Olive Committee (Committee) for the 2001 and subsequent fiscal years from \$21.73 to \$27.90 per ton of olives handled. 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 begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** March 7, 2001. Comments received by May 7, 2001, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 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 complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: 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 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, 2001, 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 increases the assessment rate established for the Committee for the 2001 and subsequent fiscal years from \$21.73 per ton to \$27.90 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 2000 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 12, 2000, and unanimously recommended fiscal year 2001 expenditures of \$1,348,242 and an assessment rate of \$27.90 per ton of olives. In comparison, last year's budgeted expenditures were \$2,472,235 and the assessment rate was \$21.73. Assessable tonnage for 2001 is estimated at 46,374, significantly below last year's of 113,750. Although the Committee reduced expenditures in

marketing development and research, the significant decrease in tonnage necessitates a higher assessment rate. The reduced research expenditures will fund: (1) Continued research and development of the mechanical olive harvester and (2) scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly lower because handlers have taken more responsibility for market development.

The following table compares major budget expenditure recommendations for the 2001 fiscal year with those from last year.

Budget expenditure	2000	2001
Administration ...	\$356,190	\$343,490
Research .....	868,550	408,337
Market Development .....	1,212,495	596,415

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual tonnage, and additional pertinent factors. The significant assessable tonnage decrease in 2001, due in large part to the alternate-bearing nature of olives, has made it necessary for the Committee to increase the assessment rate from \$21.73 to \$27.90 per ton, an increase of \$6.17. Income derived from handler assessments, interest, and reserve funds will be adequate to cover budgeted expenses. Funds in the reserve will continue to be less than the maximum permitted by § 932.40 of the order (approximately one fiscal year's expenses) by the end of 2001.

The assessment rate established in this rule will 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 is effective 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 2001 budget and those for subsequent fiscal years will 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 2 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) 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 increases the assessment rate established for the Committee and collected from handlers for the 2001 and subsequent fiscal years from \$21.73 per ton to \$27.90 per ton of olives. The Committee unanimously recommended 2001 expenditures of \$1,348,242 and an assessment rate of \$27.90 per ton. The assessment rate of \$27.90 is \$6.17 higher than the 2000 rate. The estimated quantity of assessable olives for the 2001 fiscal year is 46,374 tons. Thus, the \$27.90 rate should generate enough funds 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 2001 fiscal year with those from last year.

Budget expenditure	2000	2001
Administration ...	\$356,190	\$343,490
Research .....	868,550	408,337
Market Development .....	1,212,495	596,415

The reduced research expenditures will fund: (1) Continued research and development of the mechanical olive harvester and (2) scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly lower because handlers have taken more responsibility for market development.

A higher assessment rate is recommended for 2001 because the 2001 fiscal year assessable tonnage is approximately 59 percent smaller than last fiscal year's tonnage, due in large part to the alternate bearing nature of the crop:

1999	2000	2001
67,900 .....	113,750	46,374

The Committee reviewed and unanimously recommended 2001 expenditures of \$1,348,242, which reflects the decreases in the research, market development and administrative budgets. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, the Research Subcommittee, and the Marketing Subcommittee. Alternate spending levels were discussed by these groups, based upon potential reductions in the funding of various research and market development projects. The Committee determined it was necessary to increase the assessment rate to cover these expenses because the significant decrease in tonnage will not provide sufficient funds to cover anticipated expenses. The assessment rate of \$27.90 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that the grower revenue for the 2000–2001 crop year is estimated to be approximately \$36,068,864. Therefore, if the assessment rate is increased to \$27.90 per ton, the estimated assessment revenue to the Committee will be \$1,293,835 for the 2001 fiscal year, or approximately 3.59 percent of grower revenue.

This action increases the assessment obligation imposed on handlers for fiscal year 2001 by \$286,128 (\$6.17 difference between the new and current rate  $\times$  46,374 assessable tonnage estimate for 2001). Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, increasing the

assessment rate increases the burden on handlers, and may increase 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 12, 2000, 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 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 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 impracticable, 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 2001 fiscal period begins on January 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable olives handled during such fiscal period; (2) the action increases the assessment rate for assessable olives beginning with the 2001 fiscal period; (3) this action was unanimously recommended by the Committee 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

Marketing agreements, Olives, 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, 2001, an assessment rate of \$27.90 per ton is established for California olives.

Dated: February 28, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–5320 Filed 3–5–01; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 956

[Docket No. FV00–956–1 FIR]

#### Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Revision of Administrative Rules and Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule modifying the handler assessment and reporting requirements under the Walla Walla sweet onion marketing order. The marketing order regulates the handling of sweet onions grown in the Walla Walla Valley and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). For sweet onions handled during the period September 1 through May 31 of each fiscal period, this rule continues in effect dates by which handlers must pay assessments and furnish reports to the Committee that reflect new cultural and storage practices that have extended the

traditional mid-summer marketing season.

**EFFECTIVE DATE:** April 5, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, 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 complying with this regulation 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.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule provides dates by which handlers must pay assessments and furnish reports to the Committee that reflect new cultural and storage practices for sweet onions handled during the period September 1 through May 31 of each fiscal period. 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. A handler is afforded the opportunity for