

Rules and Regulations

Federal Register

Vol. 76, No. 43

Friday, March 4, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-FV-10-0115; FV11-932-1 IR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for 2011 and subsequent fiscal years from \$44.72 to \$16.61 per 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 March 5, 2011. Comments received by May 3, 2011, 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 document 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>. All comments submitted in response to this rule 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: Jeff 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 or 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.

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, 2011, 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 decreases the assessment rate established for the Committee for the 2011 and subsequent fiscal years from \$44.72 to \$16.61 per ton of 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 2010 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of \$44.72 per ton of olives that would continue in effect from year to 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, 2010, and unanimously recommended 2011 expenditures of \$2,203,909 and an assessment rate of \$16.61 per ton of olives. In comparison, last year's budgeted expenditures were \$929,923. The assessment rate of \$16.61 is \$28.11 per ton lower than the rate currently in effect.

The Committee recommended the lower assessment rate because of a substantial increase in olive volume for the 2011 fiscal year. The olive volume available for fiscal year 2011 as reported

by the California Agricultural Statistics Service (CASS) is 164,984 tons, which compares to 23,033 tons reported for the 2010 fiscal year.

The major expenditures recommended by the Committee for the 2011 fiscal year include \$1,093,009 for Research Programs, \$700,000 for Marketing Programs, \$335,900 for General Administration, and \$75,000 for Inspection Equipment Development. Budgeted expenses for these items in 2010 were \$300,000, \$255,000, \$324,923, and \$50,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers for the 2011 fiscal year, and additional pertinent factors. Actual assessable tonnage for the 2011 fiscal year is expected to be lower than the 164,984 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 interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order of 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 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 2011 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) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 1,000 producers of California 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 (SBA) (13 CFR 121.201) as those having annual receipts of 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 2010 was approximately \$811 per ton and total grower production was around 165,000 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 decreases the assessment rate established for the Committee and collected from handlers for the 2011 and subsequent fiscal years from \$44.72 to \$16.61 per ton of olives. The Committee unanimously recommended 2011 expenditures of \$2,203,909 and an assessment rate of \$16.61 per ton. The recommended assessment rate of \$16.61 is \$28.11 lower than the 2010 rate. Income generated from the \$16.61 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income.

The major expenditures recommended by the Committee for the 2011 fiscal year include \$1,093,009 for Research Programs, \$700,000 for Marketing Programs, \$335,900 for General Administration, and \$75,000 for Inspection Equipment Development. Budgeted expenses for these items in 2010 were \$300,000, \$255,000, \$324,923, and \$50,000, respectively.

The Committee recommended the lower assessment rate because of a substantial increase in olive volume for the 2011 fiscal year. The olive volume available for fiscal year 2011 as reported by CASS is 164,984 tons, as compared

to 23,033 tons reported for the 2010 fiscal year.

The Committee reviewed and unanimously recommended 2011 expenditures of \$2,203,909, which included increases in administrative expenses, marketing programs, equipment development and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Executive Subcommittee, Marketing Subcommittee, Inspection Subcommittee and the Research Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of \$16.61 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 indicates that grower price could range between approximately \$811 per ton and \$1,105 per ton. Therefore, the estimated assessment revenue for the 2011 fiscal year as a percentage of total grower revenue could range between 1.5 and 2 percent.

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 15, 2010, 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 this interim rule, including 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/MarketingOrderSmallBusinessGuide>. 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 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 2011 fiscal year began on January 1, 2011, 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) this action decreases the assessment rate for assessable olives beginning with the 2011 fiscal year; (3) handlers are aware of this action, which was unanimously recommended at a public meeting, and is similar to other assessment rate actions issued in past years; and (4) this interim 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, 2011, an assessment rate of \$16.61 per ton is established for California olives.

Dated: February 25, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4807 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–FV–10–0006]

Blueberry Promotion, Research, and Information Order; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Blueberry Promotion, Research, and Information Order (Order) under the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS concluded that there is a continued need for the order.

ADDRESSES: Interested persons may obtain a copy of the review on the Internet at: <http://www.regulations.gov> or requests for copies can be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, (Department) Room 0632–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; facsimile: (202) 205–2800 or electronic mail: Jeanette.Palmer@ams.usda.gov.

FOR FURTHER INFORMATION CONTACT:

Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: Jeanette.Palmer@ams.usda.gov.

SUPPLEMENTARY INFORMATION: The Blueberry Promotion, Research and Information Order (7 CFR part 1218) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425].

The Order became effective on August 16, 2000 [65 FR 43961]. The Order is administered by the U.S. Highbush Blueberry Council (Council) with oversight by the Department of

Agriculture (Department). The program is funded by assessments on highbush (cultivated) blueberries grown in and imported into the United States. Producers and importers pay the assessment. The producer assessment is remitted by first handlers, and the importer assessment is remitted by the U.S. Customs and Border Protection. Producers and importers who produce or import less than 2,000 pounds of highbush blueberries annually are exempt from the program. The purpose of the Order is to finance a coordinated program of promotion, research, and information to maintain and expand the market for fresh and processed cultivated blueberries in the United States and abroad.

The Council is composed of 16 members as follows: 10 producers (one from each of four regions and one from each of the top six producing states); 3 importers; 1 exporter from a foreign production area; 1 handler; and 1 public member. Each member has an alternate. The members and alternates are appointed to the Council by the Secretary of Agriculture and serve a term of 3 years.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters who are subject to the provisions of the Order. The majority of the blueberry producers covered by the Order may be classified as small entities. Most importers, first handlers, and exporters would not be classified as small businesses.

AMS published in the **Federal Register** on March 24, 2006 [71 FR 14827], its plan to review certain regulations, including the Blueberry Order under criteria contained in section 610 of the RFA [5 U.S.C. 601–612]. Because many AMS regulations impact small entities, AMS 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.

AMS published a notice of review and request for written comments in the **Federal Register** on February 23, 2010 [75 FR 7986]. Twenty comments were received by the April 26, 2010, deadline.

The review was undertaken to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. AMS considered the following factors: (1) The continued need for the Order; (2) comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent