

**SUMMARY:** This rule increases the assessment rate established for the California Olive Committee (committee) for the 2003 and subsequent fiscal years from \$10.09 to \$13.89 per ton of olives handled. The committee locally administers the marketing order regulating 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 began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** May 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Assistant, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

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 fixed herein will be applicable to all assessable olives beginning on January 1, 2003, 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 increases the assessment rate established for the committee for the 2003 and subsequent fiscal years from \$10.09 per ton to \$13.89 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 2002 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 11, 2002, and unanimously recommended fiscal year 2003 expenditures of \$1,230,590 and an assessment rate of \$13.89 per ton of olives. In comparison, last year's budgeted expenditures were \$1,428,585. The assessment rate of \$13.89 is \$3.80 higher than the \$10.09 rate currently in effect.

Expenditures recommended by the committee for the 2003 fiscal year include \$633,500 for marketing

development, \$347,090 for administration, and \$250,000 for research. Budgeted expenses for these items in 2002 were \$811,935 for marketing development, \$339,650 for administration, and \$250,000 for research.

The assessment rate recommended by the committee was derived by considering anticipated expenses, actual olive tonnage received by handlers, and additional pertinent factors. The California Agricultural Statistics Service (CASS) reported olive receipts for the 2002-03 crop year at 89,006 tons, which compares to 123,439 for the 2001-02 crop year. The reduction in the crop size for the 2002-03 crop year, due in large part to the alternate-bearing characteristics of olives, made it necessary for the committee to recommend an increase in the assessment rate from the current \$10.09 per assessable ton to \$13.89 per assessable ton, an increase of \$3.80 per ton. Income derived from handler assessments, interest, and utilization of reserve funds will 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 assessable tonnage for the 2003 fiscal year is expected to be less than the receipts of 89,006 tons reported by CASS, because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. The quantity of olives that is expected to be diverted cannot be published in this document. The olive industry consists of only three handlers, two of which are much larger than the third, and the confidentiality of this handler information must be maintained to protect the proprietary business positions of each of the handlers.

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