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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. AMS–FV–07–0155; FV08–932–1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim final rule which decreased the assessment rate established for the California Olive Committee (committee) for the 2008 and subsequent fiscal years from $47.84 to $15.60 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:* June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Garcia, 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: *Jen.Garcia@usda.gov* or *Kurt.Kimmel@usda.gov.*

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.*

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.''

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, 2008, 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 continues in effect the action that decreased the assessment rate established for the committee for the 2008 and subsequent fiscal years from $47.84 to $15.60 per ton of assessable olives from the applicable crop years.

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 fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. 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 2007 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 5, 2007, and unanimously recommended 2008 fiscal year expenditures of $1,588,552 and an assessment rate of $15.60 per ton of assessable olives. In comparison, last year's budgeted expenditures were $965,396. The assessment rate of $15.60 is $32.24 lower than the 2007 rate. The committee recommended the lower assessment rate because the 2007–08 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are 108,059 tons, which compares to 16,270 tons in 2006–07. The 2006–07 crop was unusually small in size due to unusual weather conditions.

The major expenditures recommended by the committee for the 2008 fiscal year include $500,000 for research, $750,000 for marketing activities, and $288,552 for administration. Budgeted expenditures for these items in 2007 were $365,775, $347,450, and $252,171, respectively. The committee recommended a larger 2008 research budget so it can expand its ongoing research to develop a mechanical olive harvesting method. The committee also recommended an increase in the 2008 marketing budget to allow for a restructuring of its marketing program, which will focus on a new Web site and trade advertisements. Recommended increases in the administrative budget are due mainly to a necessary office move and increases in employee benefits. Another $50,000 is budgeted for 2008 for a possible inspection-related research project.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2007–08 crop year, and additional pertinent factors. Actual assessable tonnage for the 2008 fiscal year is expected to be higher than the 2007–08 crop receipts of 108,059 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 funds from the committee's authorized reserve and interest income, should be adequate to cover budgeted expenses. Funds in the reserve should be kept within the maximum permitted by the order of approximately one fiscal year's expenses (§ 932.40).

The assessment rate 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 2008 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), 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 745 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 $6,500,000.

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 continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2008 and subsequent fiscal years from $47.84 to $15.60 per ton of assessable olives. The committee unanimously recommended 2008 expenditures of $1,558,552 and an assessment rate of $15.60 per ton. The assessment rate of $15.60 is $32.24 lower than the 2007 rate. The lower assessment rate is necessary because assessable olive receipts for the 2007–08 crop year were reported by CASS to be 108,059 tons, compared to 16,270 tons for the 2006–07 crop year. Actual assessable tonnage for the 2008 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 $15.60 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).

Expenditures recommended by the committee for the 2008 fiscal year include $500,000 for research, $750,000 for marketing activities, and $288,552 for administration. Budgeted expenditures for these items in 2007 were $365,775, $347,450, and $252,171, respectively. The committee recommended a larger 2008 research budget so it can expand its ongoing research to develop a mechanical olive harvesting method. The committee also recommended an increase in the 2008 marketing budget to allow for a restructuring of its marketing program, which will focus on a new website and trade advertisements. Recommended increases in the administrative budget are due mainly to a necessary office move and increases in employee benefits. Another $50,000 is budgeted for a possible inspection-related research project.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Market Development, and Research Subcommittees. Alternative spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry. The assessment rate of $15.60 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 indicates that the grower price for the 2007–08 crop year was approximately $1,007.78 per ton for canning fruit and $378.51 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 81 percent of a ton of olives are canning fruit sizes and 18 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 108,059 total tons of canning and limited-use sizes would be $95,322,099 given the current grower prices for those sizes. Therefore, the assessment revenue for the 2007–08 fiscal year is expected to be approximately 2 percent of grower revenue.

This action continues in effect the action that decreased 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 5, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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.

An interim final rule concerning this action was published in the **Federal Register** on February 7, 2008, (73 FR 7199). Copies of that rule were also e-mailed or sent via facsimile to all commodity handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on April 7, 2008, and 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/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.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 932 which was published at 73 FR 7199 on February 7, 2008, is adopted as a final rule without change.

Dated: May 6, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–10426 Filed 5–8–08; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[AMS–DA–07–0059; AO–388–A22 and AO–366–A51; Docket No. DA–07–03–A]

Milk in the Appalachian and Southeast Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the regulations that were published in the March 17, 2008 **Federal Register** (73 FR 14153). The regulations inadvertently omitted language in § 1005.13 paragraphs (d)(3) and (d)(4), and § 1007.13 paragraphs (d)(3) and (d)(4) that provide for a zero diversion limit standard on loads of milk requesting transportation credits. This document corrects the final regulations by revising these sections.

DATES: *Effective Date:* May 9, 2008.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branches, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This document provides correcting amendments to the regulations of the Appalachian and Southeast milk marketing orders, found respectively at 7 CFR part 1005 and 7 CFR part 1007.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

■ Accordingly, 7 CFR parts 1005 and 1007 are corrected by making the following correcting amendments:

■ 1. The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 2. In § 1005.13, paragraphs (d) (3) and (4) are revised to read as follows:

§ 1005.13 Producer Milk.

* * * * *

(d) * * *

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82 (c)(2)(ii) and (iii), and for which a transportation credit is requested.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 3. In § 1007.13, paragraphs (d)(3) and (4) are revised to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting for conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that