

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV04-932-1 IFR]

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

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

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

**SUMMARY:** This rule decreases the assessment rate established for the California Olive Committee (committee) for the 2004 and subsequent fiscal years from \$13.89 to \$12.18 per ton of assessable 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** February 10, 2004; comments received by April 9, 2004, 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 e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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:** Terry Vawter, 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, 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 be applicable to all assessable olives beginning on January 1, 2004, 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 decreases the assessment rate established for the committee for the 2004 and subsequent fiscal years from \$13.89 per ton of assessable olives to \$12.18 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 budget and assessment rate is deliberated and formulated in a public meeting, and the expenditures are deliberated in various public subcommittee meetings prior to the committee meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Prior to this rule, the committee recommended, and USDA approved, an assessment rate that continued in effect until 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, 2003, and unanimously recommended fiscal year 2004 expenditures of \$1,269,063 and an assessment rate of \$12.18 per ton of olives. In comparison, last year's budgeted expenditures were \$1,230,590. The assessment rate of \$12.18 is \$1.71 lower than the \$13.89 rate in place for the 2003 fiscal year.

The committee recommended expenditures for the 2004 fiscal year, including \$633,500 for marketing development, \$360,563 for administration, and \$225,000 for research. The committee also recommended a fiscal year 2004 expenditure of \$50,000 for the development of an enhanced flavor standards program.

For the 2003 fiscal year, budgeted expenses for these items were \$633,500 for marketing development, \$347,090 for administration, and \$250,000 for research. There were no budgeted expenditures for the development of flavor standards and flavor-standards inspection training for the 2003 fiscal year.

The California Agricultural Statistics Service (CASS) reported olive receipts for the 2003–04 crop year at 102,703 tons, which compares to 89,006 for the 2002–03 crop year. The increase in the crop size for the 2003–04 crop year, due in large part to the alternate-bearing characteristics of olives, has made it possible for the committee to recommend the \$1.71 per ton decrease from the current \$13.89 per assessable ton rate to \$12.18 per assessable ton. The assessment rate recommended by the committee was derived by considering anticipated expenses, actual olive tonnage received by handlers, and additional pertinent factors.

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 of approximately one fiscal period's expenses as required by § 932.40 of the marketing order.

The assessable tonnage for the 2004 fiscal year is expected to be less than the receipts of 102,703 tons reported by CASS, because handlers may divert some olives for uses that are exempt from marketing order requirements.

The assessment rate continues 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 in effect for an indefinite period, the committee would 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 and subcommittee meetings are open to the public and interested persons may express their views at these meetings. USDA would

evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2004 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

#### **Initial 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 initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions to ensure 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 3 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.601) defines small agricultural producers as those with annual receipts less than \$750,000, and small agricultural service firms as those with annual receipts less than \$5,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities, but not all of the handlers may be classified as small entities.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2004 and subsequent fiscal years from \$13.89 per ton to \$12.18 per ton of olives. The committee unanimously recommended 2004 fiscal year expenditures of \$1,269,063 and an assessment rate of \$12.18 per ton. The assessment rate of \$12.18 per ton is \$1.71 per ton lower than the 2003 rate.

The quantity of olive receipts for the 2003–04 crop year was reported by CASS to be 102,703 tons, but the actual assessable tonnage for the 2003–04 crop year is expected to be lower. This is because handlers are expected to divert some olives to exempt outlets on which assessments are not paid.

The \$12.18 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 will be

kept within the maximum of approximately one fiscal period's expenses as required by § 932.40 of the marketing order.

Expenditures recommended by the committee for the 2004 fiscal year include \$633,500 for marketing development, \$360,563 for administration, and \$225,000 for research. The committee also recommended a fiscal year 2004 expenditure of \$50,000 for the development of an enhanced flavor standards program.

Budgeted expenses for these items in the 2003 fiscal year were \$633,500 for marketing development, \$347,090 for administration, and \$250,000 for research. There were no expenditures for the development of flavor standards and flavor-standards training for inspection personnel in the 2003 fiscal year.

Olive receipts totaled 102,703 tons for the 2003–04 crop year compared to the 2002–03 crop year's tonnage of 89,006. The committee has increased fiscal year 2004 expenses, but the increase in olive production makes the lower assessment rate possible.

The research expenditures will fund studies to develop chemical and scientific defenses to counteract a threat from the olive fruit fly in the California production area. Market development expenditures are the same because the committee's marketing program for fiscal year 2004 is similar.

The committee reviewed the budget and assessment rate, and unanimously recommended fiscal year 2004 expenditures of \$1,269,063, which reflect decreased research expenditures and increased administrative and flavor-standards expenditures.

While deliberating this budget, the committee considered information from various sources, such as the committee's Executive, Research, and Marketing Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative costs and benefits to the olive industry of various research and marketing projects, the total quantity of assessable olives received by handlers, and other pertinent factors. Such deliberations resulted in the recommended 2004 budget and the assessment rate of \$12.18 per ton of assessable olives.

A review of historical industry information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2003–04 crop year will be a weighted average of \$478 per ton for canning size fruit and \$254 per ton for limited-use size fruit. The weighted average is calculated by the committee

staff and takes into account the prices per ton offered by each handler for various sizes of the major olive varieties produced.

Approximately 85 percent of a ton of olives are canning sizes and 10 percent are limited-use sizes, leaving the balance as cull fruit. Thus, given the current anticipated grower prices, the average grower price per ton would be \$431.70. The estimated assessment revenue is expected to be approximately 2.8 percent of the average grower price. Total grower revenue on 102,703 tons would be \$44,336,885.

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 11, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The subcommittee meetings, as well, were public and all interested parties were encouraged to attend and provide comments. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule 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.

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/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.

This rule invites comments on the decreased assessment rate for 2004 and subsequent fiscal years under the Federal marketing order regulating olives grown in California. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation and other information, it is found that this interim final 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 impractical, 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 2004 fiscal year began on January 1, 2004, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during applicable the crop year; (2) this action decreases the assessment rate and the committee needs sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) this action was unanimously recommended by the committee at a public meeting attended by handlers, and is similar to other assessment rate actions issued in past years.

#### 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.

Beginning on January 1, 2004, an assessment rate of \$12.18 per ton is established for California olives.

Dated: February 3, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–2654 Filed 2–6–04; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001–NM–107–AD; Amendment 39–13451; AD 2004–03–07]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, –212, and –231 series airplanes. This AD requires repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair as necessary. This AD would also provide an optional terminating action for the repetitive inspections. This action is necessary to detect and correct fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at the frame 36 adjacent to the longitudinal beams, which could result in reduced structural integrity and possible rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)