



This document is scheduled to be published in the Federal Register on 07/18/2016 and available online at <http://federalregister.gov/a/2016-16704>, and on FDsys.gov

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. AMS-SC-16-0031; SC16-932-1 IR]

Olives Grown in California; Suspension and Revision of Incoming Size-Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the California Olive Committee (Committee) to suspend the incoming size-grade authority under the California olive marketing order (order), which regulates the handling of olives in California. The rule also makes conforming changes to the corresponding size-grade requirements in the order's rules and regulations to adapt them to the suspension. The Committee locally administers the order and is comprised of California olive producers and handlers operating within the production area. The suspension and revisions are intended to allow the Committee time to develop new incoming size-grade authority that will reflect currently-available technology and meet the industry's future needs.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by

[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] 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 and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document 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.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: Peter Sommers, Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA;

Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: PeterR.Sommers@ams.usda.gov or Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, 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 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 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 (USDA) is issuing this interim rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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. A 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 suspends the incoming size-grade authority of the marketing order and revises the corresponding size-grade requirements in the order's rules and regulations. The current authority establishes a range of size designations and average count ranges per pound into which the varieties of olives must fall in order to be size-certified by the Federal or Federal-State Inspection Service. The incoming size-grade regulations do not reflect the size-grading capabilities of newer technology available to California olive handlers. Currently, the order mandates that sizing of olives be based on count ranges and average counts per pound, while the new

technology sizes olives using their associated mass and volume. Thus, the current size-grade requirements and the sizing capabilities of the new technology are incompatible. This recommendation was passed unanimously by the Committee at a meeting on February 17, 2016.

The incoming regulations include a requirement for olives to be weighed upon receipt. This regulation is not being suspended, since handlers need to weigh the bins of incoming olives so that each producer has a record of their total deliveries to handlers. Thus, this relaxation will require continued weighing of olives but will suspend the requirement that olives be size-graded upon receipt.

By relaxing the sizing requirement, handlers will be able to voluntarily size olives to make accurate payments to their producers on their total deliveries, ensure that the olives they place into their storage tanks are uniform in size for efficient processing, and utilize any olive size for limited-use styles.

Even though there will be no incoming size requirements, handlers will continue to be bound by mandatory inspection and certification of outgoing size requirements listed in the U.S. Standards for Grade of Canned Ripe Olives (7 CFR part 52). Outgoing inspection, based on weight and count, will continue to be used to

verify compliance with the U.S. Standards of the previously sorted olives.

Limited-use styles include olives that are no longer in whole form and are sliced, segmented (wedged), chopped, halved, and broken pitted styles. When incoming regulation is in effect, the Committee has authority to identify size-grade categories of olives that are eligible to be used in limited-use styles. With the suspension of the incoming size-grade requirement, handlers will be able to use any size olive for limited-use styles. Therefore, the suspension of incoming size-grade regulation relaxes the requirements for limited-use.

This suspension is necessary in order to provide the industry, and their USDA partners, the opportunity to work on new size-grading requirements that will address and work in tandem with new sizing technology.

This rule suspends language in § 932.51 related to size-grade requirements. In addition, this rule revises language in § 932.151, where "weight" is used to replace "size-grading," and removes certain references to the "inspection service" or replaces the term with "Committee." With this change, while incoming regulation is suspended, the Committee will receive information directly from

handlers on incoming olive receipts from growers, rather than through the Inspection Service.

Section 932.51 of the order specifies that incoming olives be weighed and size-graded under the supervision of the Federal or Federal-State Inspection Service. The size designations set forth are those found in the U.S. Standards for Grade of Canned Ripe Olives (7 CFR part 52) and include additional size designations specified in § 932.51.

Section 932.51 also establishes authority for handlers to use limited-use olives. As previously stated, once the suspension is in effect, handlers will be able to use any olives in the production of limited-use styles.

As noted above, weight certification will still be required under § 932.51 for all olives received by handlers, so that producers will be able to confirm their total deliveries to handlers.

Section 932.151 of the order's rules and regulations specifies the requirements for incoming olives, which are - weighing, size-grading, and certifying of canning olives and non-canning olives (culls).

The olive industry has been involved in a technological shift since 2012. In addition to electronic reporting technology, which eliminates burdensome paper

reports, the industry has begun moving toward more cost-effective and accurate sizing technology. New technology sorts olives by measuring the volume and mass of each olive directly, rather than by count per pound and approximate count per pound. As technology changes and improves, better methods of classifying olives by size need to be in place. With the technology now available, handlers report a 30-percent reduction in labor costs. Those reduced costs contribute to making California olive handlers more competitive with other olive-processing countries.

Since new technology represents a significant departure from existing size-grading techniques, the Committee believes, with industry support, that the correct course of action is to suspend the incoming size-grade requirements. This will give the industry, working with their USDA partners, the time to develop size-grade requirements that reflect changes in technology.

This suspension requires a modification of two Committee forms, Weight and Grade Report (COC-3c) and the Report of Limited and Undersize and Cull Olives Inspection and Disposition (COC-5). Both are approved for use under OMB No. 0581-0178, Generic Vegetables and Specialty Crops, and used by the Federal or Federal-State Inspection Service to certify sizes of incoming olives and limited-use style

sizes. In addition, the COC-3c is specified as being an inspection certificate. Since this rule suspends the incoming size-grading requirements, there is no need for the inspection service to certify sizes of olives or issue an inspection certificate.

Following the publication of this rule, the COC-3c will be used by handlers to report to the Committee the incoming weights and volume size distribution of the sample. The COC-5 will be used by handlers to certify limited, undersize, and cull olive disposition.

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 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 two handlers subject to regulation under the marketing order and approximately 1,000 olive producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based upon information from the Committee and the National Agricultural Statistics Service (NASS), the average producer price for the 2013-14 crop year (the last year information was available) was \$1,150 per ton of canning-size olives and \$385 per ton for limited-use size olives. The total assessable volume was 85,668 tons. Canning sizes represented 88 percent of the assessable olive volume, while limited-use sizes represented 12 percent of the assessable olive volume.

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 relaxation is expected to positively impact both handlers and producers. Handlers will be able to use new technology as it becomes available to voluntarily size-

grade incoming fruit more accurately, helping them be more competitive. Producers will benefit from more-accurate sizing, potentially resulting in higher handler payments to producers. This relaxation will also provide the industry with the opportunity to develop new mandatory sizing requirements conducive to alternative sizing capabilities.

The Committee's Incoming Inspection Workgroup initially discussed this recommendation and its alternatives on January 25, 2016, as did the Inspection Subcommittee prior to the Committee meeting on February 17, 2016. The Committee also considered alternatives to this action, but concluded that the correct course of action would be to recommend suspension. For all the reasons cited herein, the alternative to continue mandatory size-grading was not considered viable, would not give handlers the flexibility they need, and was rejected.

This rule suspends the size-grade requirements of the incoming regulations in § 932.51, beginning with the 2016-2017 crop year. It also revises the rules and regulations in § 932.151 allowing for the continued certification of olives by weight and replaces references to the inspection service with the Committee. In addition, minor modifications are being made to the COC 3 and COC 5 forms.

The suspension and revisions are intended to allow the Committee time to develop new requirements that address advancing technology and equipment; help reduce handling costs, keeping the California industry competitive with other olive-processing countries; and increase handler efficiency.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements are approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178 (Generic Vegetables and Specialty Crops). Minor changes to those requirements are necessary as a result of this action.

AMS has submitted a request to the Office of Management and Budget (OMB) to make minor changes to forms COC-3c and COC-5. The four changes to form COC-3c include removing the block entitled "Cert No."; deleting the words "inspection certificate" from the block entitled "California Olive Committee"; deleting the statement "This lot was weighed, sampled, and size graded under the direct supervision of the Federal-State Inspection Program" and deleting the signature and date lines associated with that statement; and lastly, removing the words "OFFICIAL INSPECTION CERTIFICATE" and adding the words "Handler Use Only".

The changes to form COC-5 include changing the words "(5) REQUEST FOR INSPECTION" to "(5) DISPOSITION" and removing the words "(7) INSPECTION CERTIFICATION: The olives inspected conform to the information listed above" and deleting the space for the inspector's signature and the date. Additionally, changes to the form's instructions include removing the words "to be inspected" from the GENERAL instruction, and deleting the instruction for ITEM (7).

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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Furthermore, the Committee's meeting was widely publicized throughout the California olive industry, and all interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations. Like all Committee and subcommittee meetings, the January 25, 2016, and February 17, 2016, meetings were public meetings, and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees that review specific issues and make recommendations to the Committee. The Committee's Inspection Subcommittee met on February 17, 2016, prior to the full Committee meeting on that same day, and discussed this issue in detail. That meeting was the result of a special working group meeting on January 25, 2016. The working group was tasked with reviewing the inspection protocol and related issues, and reporting their findings and recommendations to the Inspection Subcommittee. All three meetings were public meetings, and both large and small entities were encouraged to participate and express their views. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the suspension and revision of incoming size-grade requirements under the California olive marketing order. Any comments received will be considered prior to the 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 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 60 days after publication in the **Federal Register** because: the Committee unanimously recommended these changes at a public meeting; this is a relaxation of the marketing order requirements; and this rule provides a 30-day comment period. Any comments 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.

§ 932.51 [Amended]

2. In § 932.51, suspend indefinitely paragraphs (a)(1)(ii) through (a)(5).

3. Amend § 932.151 by revising paragraphs (a), (b), (c), (d), (e)(1), (2), and (4), and (f)(1) to read as follows:

§ 932.151 Incoming regulations.

(a) Inspection stations. Natural condition olives shall be weighed only at inspection stations which shall be a plant of a handler or other place having facilities for weighing such olives: Provided, That such location and facilities are satisfactory to the committee: Provided further, That upon prior application to, and approval by, the committee, a handler may receive olives at an inspection station other than the one where the lot was weighed.

(b) Lot identification. (1) Immediately upon receipt of each lot of natural condition olives, the handler shall

complete Form COC 3A or 3C, weight and grade report or such other lot identification form as may be approved by the committee, which shall contain at least the following:

- (i) Lot number;
- (ii) Date;
- (iii) Variety; and
- (iv) Number and type containers.

(2) The handler shall maintain identity of such lot of olives with its corresponding lot weight and grade report.

(c) Weighing. Each lot of natural condition olives shall be separately weighed to determine the net weight of olives.

(d) Handler incoming responsibility—(1) General. The handler is responsible for the proper performance of all actions connected with the identification of lots of olives, the weighing of boxes or bins, the taking of samples, and the furnishing of necessary personnel for the carrying out of such actions.

(2) Certification. (i) For each lot of olives that are weighed, the handler shall complete Form COC-3A or 3C, weight and grade report, which shall contain at least the following:

- (A) Name of handler;
- (B) Name of producer;

- (C) County of production;
- (D) Applicable lot number;
- (E) Weight certificate number;
- (F) Net weight;
- (G) Number and type of containers;
- (H) Date received;
- (I) Time received; and
- (J) Weight of sample.

(ii) The completed Form COC-3A or 3C shall be furnished to the committee, which shall certify thereon that the lot was weighed as required by §932.51 if in accordance with the facts.

(e) Disposition of noncanning olives—(1) (i)

Notification and inspection of noncanning olives. Prior to disposition of noncanning olives the handler shall complete Form COC-5, report of limited and undersize and cull olives inspection and disposition, which shall contain the following:

- (A) Type and number of containers;
- (B) Type of olives (undersize or culls);
- (C) Net weight;
- (D) Variety;
- (E) Outlet (green olives, olive oil, etc.); and
- (F) Consignee.

(ii) Before disposition of such olives, the completed Form COC-5 shall be furnished to the committee.

(2) Control and surveillance. Noncanning olives that have been reported on Form COC-5 shall, unless such olives are disposed of immediately after receipt, be identified by fixing to each bin or pallet of boxes a COC control card which may be obtained from the committee. Such olives shall be kept separate and apart from other olives in the handler's possession and shall be disposed of only in the outlet shown on Form COC-5.

* * * * *

(4) Olives not subject to incoming regulation requirements. Except as otherwise prescribed in §932.51(b), any lot of olives to be used solely in the production of green olives or canned ripe olives of the "tree ripened" type shall not be subject to incoming regulation: Provided, That the applicable requirements of §932.51(b) are met and the handler notifies the committee, in writing, that such lot is to be so used. Notice may be given by writing on the weight certificate "Lot to be used solely for use in the production of green olives or tree ripened olives" and a copy of such weight certificate given to the committee.

(f) Partially exempted lots. (1) Pursuant to §932.55, any handler may process any lot of natural condition olives

for use in the production of packaged olives which has not first been weighed as an individual lot as required by §932.51(a)(1)(i) but was combined with any other lot or lots of natural condition olives, only if:

(i) All the olives in the combined lot are delivered to the handler in the same day;

(ii) The total net weight of the olives delivered to the handler by any person in such day does not exceed 500 pounds;

(iii) Each such person had authorized combination of his lot with other lots; and

(iv) The combined lot of the natural condition olives is weighed as required by §932.51(a)(1)(i) prior to processing the olives.

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Dated: July 11, 2016.

Elanor Starmer,
Administrator,
Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2016-16704 Filed: 7/15/2016 8:45 am; Publication Date: 7/18/2016]