



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-16-0031; SC16-932-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that suspended the incoming size-grade authority under the California olive marketing order, which regulates the handling of olives in California. The rule, which was recommended by the California Olive Committee (Committee), also made conforming changes to the corresponding size-grade requirements in the order's rules and regulations and two Committee forms. The Committee locally administers the order and is comprised of producers and handlers of olives operating within the area of production. The interim rule suspended the incoming size-grade authority of the marketing order and revised the corresponding size-grade requirements in the order's rules and regulations. The

change is expected to benefit handlers because the current size-grading requirements hinder handler operations and flexibility, increase costs, and diminish their competitiveness.

DATES: Effective November 28, 2016.

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 obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or by contacting Richard Lower, 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: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 932, both as

amended (7 CFR part 905), 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 Orders 12866, 13563, and 13175.

Prior to this change, the size requirements were based on count ranges, mid-points and average counts per pound, while new technology sizes olives using mass and volume. Thus, the size-grading requirements and the more advanced sizing technology available now are incompatible and hinder handler operations and flexibility, increase costs, and diminish handler competitiveness. Suspending the incoming size-grading requirements will provide an opportunity for the industry to develop new requirements applicable both to currently-available technology and future needs.

In an interim rule published in the **Federal Register** on July 18, 2016, and effective on July 19, 2016, (81 FR 46567, Doc. No. AMS-SC-16-0031, SC16-932-1 IR), paragraphs (a)(1)(ii) through (a)(5) in § 932.51 were suspended

indefinitely. In addition, the rule revised language in § 932.151, bringing that section into conformity with the intent of the rule, and necessitated minor conforming changes to two Committee forms, the Weight & Grade Report (COC-3c) and Report of Limited and Undersize and Cull Olives Inspection and Disposition (COC-5).

Final 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 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 two California olive handlers subject to regulation under the marketing order and about 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 whose annual receipts are 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 rule continues in effect the suspension of the incoming size-grading regulations in § 932.51, beginning with the 2016-17 crop year. It also continues in effect the revision of regulations in § 932.151, bringing the

rules and regulations into conformity with the rule and its intent. In addition, the rule continues in effect conforming changes made to the Committee forms, COC-3c and COC-5.

This action is expected to result in increased handler flexibility and competitiveness, while reducing some of the costs associated with size-grading. In addition, this action will allow the Committee time to develop new requirements that address advancing technology and equipment.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. Minor conforming changes to those requirements were necessary as a result of this action. AMS submitted a request to OMB to make minor conforming changes to forms COC-3c and COC-5.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, 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. Like all Committee meetings, the February 17, 2016, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 16, 2016. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-18/pdf/2016-16704.pdf>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988,

13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (81 FR 46567, July 18, 2016) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

Accordingly, the interim rule that amended 7 CFR part 932 and that was published at 81 FR 46567 on July 18, 2016, is adopted as a final rule, without change.

Dated: November 18, 2016

Bruce Summers
Associate Administrator
Agricultural Marketing Service

BILLING CODE 3410-02P
[FR Doc. 2016-28254 Filed: 11/23/2016 8:45 am; Publication Date: 11/25/2016]