



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-18-0061; SC18-932-1 FR]

**Olives Grown in California; Establish Procedures to Meet
Via Electronic Communications**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the California Olive Committee (Committee) to establish procedures to conduct meetings and voting using electronic means of communication.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Terry Vawter, Senior Marketing Specialist, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Kathie.Notoro@usda.gov or Terry.Vawter@usda.gov.

Small businesses may request information on complying with this regulation 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 Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of olives operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the

Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

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. 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.

On May 17, 2018 (83 FR 22831), the Agricultural

Marketing Service published a final rule amending 7 CFR part 900, the general regulations for federal fruit, vegetable, and specialty crop marketing agreements and orders, to authorize the use of electronic means of communication for meetings and voting.

During a meeting on June 13, 2018, the Committee unanimously recommended adoption of modern communication methods to conduct Committee meetings, as outlined in the *Federal Register* final rule referenced above (83 FR 22831). On August 17, 2018, the Committee unanimously approved the recommended procedures for the use of communication technology. This rule establishes those procedures in a new § 932.136, Use of communication technology under Subpart B - Administrative Requirements.

The Order currently states that the Committee may only meet in assembled, in-person, meetings and that voting may only be conducted at meetings or via mail or telegraph. Such limitations present logistical problems for many Committee members since membership is widely distributed across California. Some members travel over 400 miles to attend a Committee meeting, thus resulting in lost work hours and increased costs for the Committee. Allowing the

Committee to conduct meetings via electronic means of communication will likely result in increased member participation and productivity at a reduced cost, as well as greater potential for meeting quorum and voting requirements.

The Committee recommended that audio or audiovisual technology (AVT) that facilitates open communication and effectively assembles Committee members be used to conduct meetings by AVT or partial in-person meetings (meaning some members not present participate in an in-person meeting via technology). These meetings are subject to the same quorum and voting requirements currently in effect for in-person meetings under § 932.36. These requirements define a quorum as a majority of the 16-member Committee, of which at least half are producer members and half are handler members. Voting requirements state that a passing recommendation must receive a majority vote, with at least half of the voting members representing producers and half representing handlers. For recommendations regarding grade and size, a minimum of ten votes representing five producer and five handler members are necessary for approval. The requirements further state that issues to be voted on shall

be explained accurately and fully, and that all votes cast will be confirmed through a roll call.

Regarding casting votes electronically, those votes are subject to the same requirements currently in effect for mail voting in § 932.36. These requirements state that advanced notice, as well as an accurate, full and identical description of the issues to be voted on, be given to all members. For a recommendation to pass, at least 14 affirmative votes representing seven producer and seven handler members are required.

The Committee recommended these changes to provide an opportunity to conduct meetings more efficiently and cost-effectively; use of audio and/or audiovisual communication technology will result in time and cost savings to the Committee and its members by allowing for meetings to be conducted with all or a portion of its membership attending by audio and/or AVT.

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 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 approximately 1,100 producers of olives in the production area and two handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on National Agricultural Statistics Service (NASS) information, the average price to producers for the 2017 crop year was \$974.00 per ton, and total assessable volume for the 2017 crop year was 83,799 tons. Based on

production, price paid to producers, and the total number of California olive producers, the average annual producer revenue is less than \$750,000 ($\$974.00 \times 83,799 \text{ tons} = \$81,620,226$, divided by 1,100 producers equals an average annual producer revenue of \$74,200). Based on Committee data, both handlers may be classified as large entities under the SBA's definitions because their annual receipts are greater than \$7,500,000.

This rule does not impose additional costs on handlers or producers of any size. Committee members are expected to see a reduction in their travel expenses and time lost from work to attend Committee meetings in person. Thus, this rule reduces the cost burden on both handlers and producers.

The Committee considered the alternative of making no changes to the regulations. However, it was determined that by taking no action, the Committee is unnecessarily limiting the participation of some members due to time constraints and travel considerations. Therefore, the Committee determined that recommending this change was in the best interest of the Committee, its members, and the industry.

Like all Committee meetings, the June 13, 2018, meeting was public and widely publicized throughout the production area. All entities, both large and small, were able to express their views on this issue and participate in Committee deliberations. Following the meeting, ballots along with the proposed procedures were sent to all Committee members on July 31, 2018, and the mail vote concluded on August 17, 2018. The proposal received unanimous support.

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 OMB and assigned OMB No. 0581-0178 Vegetable Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A proposed rule concerning this action was published in the *Federal Register* on November 16, 2018 (83 FR 57691). Copies of the proposed rule were provided to all olive producers and handlers. The proposal was also made available through the internet by USDA and the Office of *Federal Register*. A 30-day comment period ending December 17, 2018, was provided for interested persons to respond to the proposal.

One comment was received stating that all information

communicated should be placed on the labels of jars of olives. After further review of the comment, it was determined to be outside the scope of this action. Accordingly, no changes will be made to the rule as proposed, based on the comment received.

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 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.

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. Add § 932.136 to subpart B to read as follows:

§ 932.136 Use of communication technology.

The Committee may conduct meetings by any means of audio and/or audiovisual communication technology available that effectively assembles members and alternates, and facilitates open communication; *Provided, That,* quorum and voting requirements specified in § 932.36 for physically assembled meetings shall apply. The Committee may also vote electronically; *Provided, That,* such voting shall be subject to the same requirements specified for mail voting in § 932.36.

Dated: February 12, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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