



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

[Doc. No.: **AMS-SC-19-0081; SC-19-932-2**]

**Olives Grown in California; Proposed Amendments to the Marketing Order No. 932**

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

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule invites comments on proposed amendments to Marketing Order No. 932, which regulates the handling of olives grown in California. The proposed amendment would change the California Olive Committee's (Committee) quorum requirements.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed 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 proposed 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:** Melissa Schmaedick, Senior Marketing Specialist, or Andrew Hatch, Chief, Rulemaking Services Branch, 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: [Melissa.Schmaedick@usda.gov](mailto:Melissa.Schmaedick@usda.gov) or [Andrew.Hatch@usda.gov](mailto:Andrew.Hatch@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](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing 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 olive producers and handlers operating within the area of production.

Section 8c(17) of the Act (7 U.S.C 608c(17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900.43) authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order would effectuate the declared policy of the Act, a subsequent

proposed rule and notice of referendum would be issued and producers would be allowed to vote for or against the proposed Order amendments. AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

The Department of Agriculture (USDA) is issuing this proposed 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 proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not be deemed to preclude, preempt, or supersede any State program covering olives grown in California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15) (A) of the Act (7 U.S.C. 608c(15) (A)), 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 no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice authorize

the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed herein is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the "Initial Regulatory Flexibility Analysis" section of this proposed rule.

The Committee unanimously recommended the amendments following deliberations at a public meeting held on July 29, 2019. The proposed action would amend the Order by changing the Committee's quorum requirements.

Section 932.25 establishes an administrative committee, the California Olive Committee, with 16 members (eight producer members and eight handler members) and

further allows the committee to be increased by a public member (who is not be a producer or handler of olives nor an officer or employee or director of any producer or handler of olives) for a total of 17 members. In addition, this section requires that each member has an alternate who meets the same qualifications as the member. The Committee currently operates with 17 members and 17 alternate members.

Section 932.30 further states that each alternate member shall act in the place and stead of such member (a) during such member's absence, and (b) in the event of such member's removal, resignation, disqualification or death, until a successor for such member's unexpired term has been selected and has qualified.

Section 932.36 establishes the Committee's quorum requirements. Current requirements state that a quorum must consist of at least 10 members of whom at least five must be producer members and at least five must be handler members and, if the Committee is increased by the addition of a public member, a quorum must consist of at least 11 members of which at least five must be producer members and at least five must be handler members. Given that the

Committee currently has a public member, a quorum of 11 members of which five must be producers and five must be handlers is required.

This proposed action would amend § 932.36 by removing the requirement of having five producer members and five handler members in attendance to form a quorum. The proposed modified language would define a quorum as consisting of at least 10 members and, if the committee is increased by the addition of a public member, a quorum would consist of at least 11 members.

The proposed modification would also clarify that alternate members acting as members could satisfy the quorum requirement. The Committee's proposed amendment, which would modify the second sentence of the current § 932.36, adds a phrase recognizing that alternate members who are serving in place of an absent member should be counted as full Committee members in the context of qualifying a quorum. This proposed phrase reiterates the authority of alternate members as specified in § 932.30. For clarity and consistency, USDA recommends adding the same phrase to the first sentence of § 932.36. The proposed revision to the sentence would read as follows:



"Decisions of the committee shall be by majority vote of the members, including alternates acting as members, present and voting, and a quorum must be present:..." This proposed additional revision would clarify that alternate members acting as members could not only fulfill quorum requirements, but they would also be able to vote as members on matters of Committee business in the absence of their member. This proposed addition has been incorporated into the amendatory text of this document.

Since promulgation of the Order in 1965, the California olive industry has seen reductions of 64 percent (from 2500 to 900) and 93 percent (from 28 to two) in the number of California olive producers and handlers, respectively. Industry consolidation has resulted in increased difficulties in filling Committee member seats as well as fulfilling quorum requirements at meetings.

Given the current quorum requirement of a minimum of five producers and five handlers in attendance, the absence of just one individual could result in the lack of a quorum. Without a quorum, the Committee is unable to vote on business decisions or make regulatory recommendations to USDA. Meetings without a quorum are also costly as

attendees must travel to attend the meeting, thus incurring travel costs in addition to time lost operating their businesses.

Adjusting the current quorum requirement as proposed would lower the risk of not reaching a quorum during scheduled meetings due to the absence of the required number of producer or handler members. This change would streamline the Committee's operations and increase its effectiveness by allowing the Committee to conduct business as long as the minimum number of members are in attendance. It would also reduce the risk of members incurring costs from traveling to meetings at which business cannot be conducted due to lack of a quorum.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 so 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 900 producers of olives in the production area and two handlers subject to regulation under the Order. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of less than \$1,000,000, and small agricultural service firms as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) data, as of June 2019 the average price to producers for the 2018 crop year was \$766.00 per ton, and total assessable volume for the 2018 crop year was 17,953 tons. Based on production, the total number of California olive producers, and price paid to those producers, the average annual producer revenue is less than \$1,000,000 (\$766.00 times 17,953 tons equals \$13,751,998 divided by 900 producers equals an average annual producer revenue of \$15,280.00). Therefore, most olive producers may be classified as small entities. Both handlers may be

classified as large entities under the SBA's definitions because their annual receipts are greater than \$30,000,000.

The proposed change would revise the quorum requirement for Committee meetings by removing the requirement of having five producer members and five handler members in attendance to form a quorum. The proposed modified language would define a quorum as consisting of at least 10 members and, if the committee is increased by the addition of a public member, a quorum would consist of at least 11 members.

The Committee unanimously recommended the proposed amendment at a public meeting on July 29, 2019. If this proposed amendment is approved in a referendum, there would be no direct financial effects on producers or handlers as it is primarily administrative in nature. The proposed amendment would increase the efficiency of the Committee's operations and allow it to respond more quickly to the industry's needs.

Since 1965, when the marketing order was established, the number of producers and handlers operating in the industry has decreased significantly, dropping from 2,500 to 900 (64 percent) and from 28 to two (93 percent),

respectively. Industry consolidation has made it difficult to find enough members to fill positions on the Committee. Moreover, fulfilling quorum requirements at meetings has also become increasingly challenging.

Changing the quorum requirement from the current 11 member requirement, of which five must be producers and five must be handlers, to simply the attendance of 11 members would increase meeting efficiency by making the quorum requirement more easily fulfilled. This proposed change would also reduce costs to members and Committee and USDA staff who travel to meetings where a quorum is not established. If implemented, the proposed amendment is not expected to result in any increases in economic costs or burden to industry members, USDA staff or consumers.

Alternatives to this proposed amendment, including making no changes at this time, were considered by the Committee. One alternative included lowering the required number of producer or handler members in attendance. However, given that there are only two handlers in operation within the industry, this option was still considered too restrictive by the Committee. Therefore,

the alternatives were not considered viable by the Committee.

AMS believes the proposed amendment is justified and necessary to ensure the Committee's ability to locally administer the program. Modifying the quorum requirement as proposed in this rule would ensure a more efficient and orderly flow of business.

#### **Paperwork Reduction Act**

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 and Specialty 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 proposed rule would impose 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 action.

The Committee's meetings were widely publicized throughout the California olive production area. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the July 29, 2019, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposed amendment.

Interested persons are invited to submit comments on the proposed amendments to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following an analysis of any comments received on the amendments in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If

AMS determines that the amendments would effectuate the declared policy of the Act, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments.

Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the *Federal Register*. A final rule would then be issued to effectuate the amendments if it is favored by producers participating in the referendum.

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.

### **General Findings**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 932; and all said previous findings and determinations are



hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 932 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 932 as hereby proposed to be amended regulates the handling of olives grown in California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 932 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 932 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences

in the production and marketing of olives produced or packed in the production area; and

5. All handling of olives produced or packed in the production area as defined in Marketing Order 932 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to these proposed amendments.

Comments received during the comment period on the amendments proposed will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendment. If favored by producers participating in the referendum, a final rule would then be issued to effectuate it.

**List of Subjects in 7 CFR Part 932**

Olives, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be 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.

**§ 932.36 [Amended]**

2. Amend § 932.36 to read as follows:

**§ 932.36 Procedure.**

Decisions of the committee shall be by majority vote of the members, including alternates acting as members, present and voting, and a quorum must be present: *Provided*, That decisions requiring a recommendation to the Secretary on matters pertaining to grade and size regulations shall require at least 10 affirmative votes, at least 5 of which must be from producer members and at least 5 of which must be from handler members and, if the committee is increased by the addition of a public member, at least 11 affirmative votes shall be required, at least 5 of which must be from producer members and at least 5 of which must be from handler members. A quorum shall consist of at least 10 members, including alternates acting as members, and, if the committee is increased by the addition of a public member, a quorum shall consist of at least 11 members, including alternates acting as members. Except in

case of an emergency, a minimum of 5 days advance notice shall be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When voted on by such method, at least 14 affirmative votes, of which seven shall be producer member votes and seven shall be handler member votes, shall be required for adoption and, if the committee is increased by the addition of a public member, votes by mail or telegram shall require at least 15 affirmative votes, of which at least 7 shall be producer member votes and at least 7 shall be handler member votes. The committee may recommend for the Secretary's approval changes in the number of affirmative votes required for adoption of any proposition voted upon by means of a mail or telegram ballot: *Provided*, That the number of affirmative votes required for adoption shall not be less than ten, and in any case an equal number

of producer member and handler member votes shall be required for adoption and, if the committee is increased by the addition of a public member, the number of affirmative votes required for adoption shall be increased by one.

Dated: November 1, 2019

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

**BILLING CODE 3410-02 P**

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