



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

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

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 932, which regulates the handling of olives grown in California. The amendment, which was proposed by the California Olive Committee (Committee), was approved by producers in a referendum. This action revises the marketing order's quorum requirement and makes a clarifying change stating that alternate members acting as members to form a quorum would also be eligible to cast votes.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, 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: [Geronimo.Quinones@usda.gov](mailto:Geronimo.Quinones@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 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." Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action.

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 final 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 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 the 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 (7 U.S.C. 608c(17)), 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 additional 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 based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

The Agricultural Marketing Service (AMS) considered these factors and has determined that amending the Order as proposed could appropriately be accomplished through informal rulemaking.

The proposed amendment was unanimously recommended by the Committee following deliberations at a public meeting held on July 29, 2019. A proposed rule soliciting comments on the amendment was issued on November 1, 2019, and published in the Federal Register on November 6, 2019 (84 FR 59736). No comments were received. As a result, no changes to the proposed rule were made. A "proposed rule and referendum order" was then issued on February 21, 2020, and published in the *Federal Register* on February 27, 2020 (85 FR 11312). This document

directed that a referendum among California olive producers be conducted March 9, 2020, through March 20, 2020, to determine whether they favored the proposal. To become effective, the amendment had to be approved by two-thirds of producers voting or by those producers voting in the referendum who represented at least two-thirds of the volume of California olives.

The amendment was favored by 86 percent of the producers voting and by 96 percent of the volume represented in the referendum; both calculations exceed the two-thirds requirement.

The amendment in this final rule changes the Committee's quorum requirements. The amendment also makes a clarifying change that alternate members acting as members to form a quorum would also be eligible to cast votes.

### **Final 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 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 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 ( $\$766.00 \times 17,953 \text{ tons} = \$13,751,998$  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 amendment, which was unanimously recommended by the Committee at a public meeting on July 29, 2019, will change the Committee's quorum requirement. A clarifying change stating

that alternate members acting as members to form a quorum would be eligible to cast votes will also be made.

This amendment will have no direct economic effect on producers or handlers. The number of producers and handlers operating in the industry has decreased significantly since the Order was established in 1965, dropping from 2,500 to 900 (64 percent) and from 28 to 2 (93 percent), respectively. Industry consolidation has made it difficult to find enough members to fill positions on the Committee.

The Committee considered alternatives to the proposal, including making no changes. AMS believes the proposal is justified and necessary to ensure the Committee's ability to locally administer the program. Revising the quorum requirement, will help 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 as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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.

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 citizens to access Government information and services, and for other purposes.

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. The Committee meetings were public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the *Federal Register* on November 6, 2019 (84 FR 59736). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and all interested parties. The proposed rule was made available through the internet by USDA and the Office of the *Federal Register*. A 30-day comment period ending

December 6, 2019, was provided to allow interested persons to respond to the proposals. No comments were received; therefore, no changes were made to the proposed amendment.

A proposed rule and referendum order was then issued on February 21, 2020, and published in the *Federal Register* on February 27, 2020 (85 FR 11312). This document directed that a referendum among California olive producers be conducted March 9, 2020, through March 20, 2020, to determine whether they favored the proposal. To become effective, the amendment had to be approved by two-thirds of producers voting or by those producers voting in the referendum who represented at least two-thirds of the volume of California olives.

The amendment was favored by 86 percent of the producers voting and by 96 percent of the volume represented; both exceeding the two-thirds requirement.

The amended marketing agreement was subsequently mailed to all olive handlers in the production area for their approval. The marketing agreement was not approved by handlers representing more than 50 percent of the volume of olives handled by all handlers during the representative period. Consequently, no companion handler agreement will be established.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed

at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at his previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

**Order Amending the Order Regulating the Olives Grown in the California**<sup>1</sup>

**Findings and Determinations**

*(a) Findings and Determinations Upon the Basis of the Rulemaking Record.*

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; 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. The Order, as amended, and as hereby further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby further amended,

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<sup>1</sup>This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

regulates the handling of olives grown in California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

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

4. The Order, as amended, and as hereby further 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 in the production area; and

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

*(b) Determinations.*

It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of olives covered under the Order) who during the period August 1, 2018, through July 31, 2019, handled not less than 50 percent of the volume of such olives covered by said Order, as hereby amended, have signed an amended marketing agreement; and

2. The issuance of this amendatory order, further amending the aforesaid Order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of August 1, 2018, through July 31, 2019, were engaged within the production area in the production of such olives. Such producers also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of olives in the production area pursuant to the declared policy of the Act.

**Order Relative to Handling**

*It is therefore ordered,* that on and after the effective date hereof, all handling of olives grown in California shall be in conformity to, and in compliance with, the terms and

conditions of the said Order as hereby proposed to be amended as follows:

The provisions amending the Order contained in the proposed rule issued by the Administrator on November 1, 2019, and published in the *Federal Register* on November 6, 2019, (84 FR 59736) will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

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

Olives, Marketing agreements, Reporting and recordkeeping requirements.

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**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

**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. Revise § 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 10, 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 1.

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