

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 500 producers of kiwifruit in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of kiwifruit producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 12, 1996, and unanimously recommended 1996–97 expenditures of \$178,598 and an assessment rate of \$0.0175 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$172,683. The assessment rate of \$0.0175 per tray or tray equivalent is \$0.0025 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include \$108,500 for administrative staff and field salaries, \$19,748 for travel, food and lodging and \$13,000 for insurance/health and accident. Budgeted expenses for these items in 1995–96 were \$102,850 for administrative staff and field salaries, \$19,798 for travel, food and lodging and \$13,050 for insurance/health and accident.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California kiwifruit.

Kiwifruit shipments for the year are estimated at 10.5 million trays or tray equivalents of kiwifruit which should provide \$183,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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, 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, because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the

1996–97 fiscal period begins on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

#### **PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 920.213 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

#### **§ 920.213 Assessment rate.**

On and after August 1, 1996, an assessment rate of \$0.0175 per tray or tray equivalent is established for California kiwifruit.

Dated: July 31, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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#### **7 CFR Parts 932 and 944**

[Docket No. FV96–932–31FR]

#### **Olives Grown in California and Imported Olives; Establishment of Limited-Use Style Olive Grade and Size Requirements**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes the use of smaller olives in the production of limited-use styles for California olives. This rule is intended to help the California olive industry meet the increasing market needs for limited-use style olives by allowing more olives into market channels. It is expected that such increased use of olives will increase returns to growers.

As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this rule also changes the import regulation so that it conforms with the requirements established under the California olive marketing order.

**DATES:** Effective August 8, 1996; comments received by September 4, 1996 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, or by facsimile at 202-720-5698. All comments should reference the docket 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.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, CA 93721, telephone (209) 487-5901; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone (202) 720-5127. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 148 and Order No. 932 (7 CFR Part 932), as amended, 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.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary 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 requesting 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of California olives who are subject to regulation under the order during the current season, and there are about 1,200 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (913 CFR § 121.601) as those whose annual receipts are less than \$500,000; and small agricultural service firms, which includes handlers and importers, have been defined by the

Small Business Administration as those having annual receipts of less than \$5,000,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

This rule provides that smaller olives may be used in the production of limited-use styles (sliced, wedged, halved, or chopped) and will assist the California olive industry as well as importers meet increasing market needs for such olives. Annual domestic shipment data for olives indicates that for the last 5 seasons (1991 to 1995), limited use style shipments ranged from 35 percent to 41 percent of total annual domestic shipments. Absent this rule, many smaller California olives would have to be disposed of in less profitable, non-canning uses, and the smaller olives from other countries could not be imported into the United States. Both the California olive industry and olive importers should, thus, benefit from the issuance of this rule.

Based on these considerations, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Nearly all of the olives grown in the United States are produced in California. California olives are used for canned black ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or sliced, wedged, halved, or chopped styles used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. A few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 163,023 tons during the 1992-93 crop year. The California Olive Committee (committee), responsible for local administration of the order, indicated that total production for the 1995-96 crop year was 73,648 tons. While there is no estimate yet available for the 1996-97 crop, it is expected to be larger than the 1995-96 crop. Olive trees are subject to alternate bearing characteristics. This may result in high production one year and low the next, which can cause the total crop to vary greatly from year to year.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited-use styles, if

recommended by the committee and approved by the Secretary. The minimum sizes which can be authorized for limited uses were established in a 1971 amendment to the marketing order. The use of smaller olives for limited-use styles has been authorized in all but two crop years since the order was amended in 1971.

Under the marketing order, olives smaller than the prescribed minimum sizes which are authorized for limited uses must be disposed of in less-profitable, non-canning uses such as in frozen or acidified forms, or crushed for oil. Returns to producers are lower on fruit used for such purposes.

On June 13, 1996, the committee recommended, by a unanimous vote, establishment of quality and size regulations for limited-use size olives on a continuing basis pursuant to paragraph (a)(3) of § 932.52 of the order. This rule authorizes the use of additional olives for limited-use styles by relaxing the minimum sizes and making more olives available to handlers for limited-use styles.

The minimum sizes authorized for limited-use styles by this rule are smaller than those in effect last year, but are the same as those in effect for the 1991–92, 1992–93, and 1993–94 crop years.

The minimum sizes were reduced for the 1991–92 season after handler tests during the 1990–91 crop year confirmed the feasibility of using such fruit in limited-use styles. However, the minimum sizes for limited-use styles were increased slightly for the 1994–95 season to their previous levels. At that time, the handlers reported that the use of certain smaller olives in limited-use styles resulted in greater percentages of broken slices, wedges, and halves. The inconsistencies of the product, especially sliced olives, were not favored by the handlers' customers, and the committee recommended that use of these smaller olives for limited-use styles be discontinued. At its recent meeting, the committee recommended that limited-use sizes include the sizes authorized prior to the 1994–95 season.

There have been substantial changes to olive pitting and slicing equipment since the 1993–94 season. New machinery yields a greater percentage of unbroken slices, wedges, and halves by making such slices, wedges, and halves thicker and less likely to break. The new equipment also eliminates the problem of double-feeding, in which the pitter's feed wheel sends not one, but two, olives into the same pitting chamber, leaving one of the two olives unpitted. Because of these advances in the pitting and slicing equipment, the committee

believes that undersized olives may again be utilized in limited-use styles effectively and to the satisfaction of the handlers' customers.

This rule will help growers and handlers meet the increasing market demand for limited-use style olives based upon current conditions. This demand can be illustrated in the increasing shipments of sliced olives in the previous three years. Shipments of sliced olives increased by 17.11 percent from the 1991–92 season to the 1992–93 season and by an additional 14.5 percent from the 1992–93 season to the 1993–94 season. According to handlers, such shipments continue to increase. The limited-use size requirements allow the use of sizes which would otherwise have to be disposed of for less-profitable, non-canning uses. Permitting the use of such smaller olives for limited-use styles would, therefore, improve grower returns and help handlers meet the increasing demand for limited-use style olives.

The authority for limited-use size olives has been subject to an annual reconsideration by the committee since first authorized in 1971. The committee now believes that making the authority for limited-use sizes continuous rather than annual will provide handlers an opportunity to plan for and develop new markets, thereby increasing the market share of domestically-produced olives. Such increased production of limited-use styles is expected to increase returns to growers.

Based on past production and marketing experience, the committee believes that handlers will need smaller olives to meet market demand for limited-use styles of canned olives. The committee also believes that handlers will need the smaller olives on a continuing basis to meet market demand for limited-use styles of canned olives.

To effectuate this change, § 932.153 of the order's rules and regulations is being revised. The committee recommended that these new minimum sizes become effective August 1, 1996, the beginning of the new crop year.

Limited-use size olives are too small to meet the minimum size requirements established for whole and whole pitted canned ripe olives. However, they are large enough to be suitable for processing into limited-use styles. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as in frozen or acidified forms, and crushed for oil.

The specified sizes for the different olive variety groups are the minimum sizes which are deemed desirable for

use in the production of limited-use styles at this time. As in past years, permitting the use of smaller olives in the production of limited-use styles will allow handlers to take advantage of the strong market for sliced, wedged, halved, and chopped olives. By permitting the use of such olives, handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements, thus increasing returns to growers.

Although these limited-use sizes are effective for an indefinite period, the committee will continue to meet prior to or during each crop year to consider recommendations for modification of these limited-use sizes. The dates and times of committee meetings are available from the committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate the Committee's recommendations and other available information to determine whether modification of the limited-use sizes is needed. Further rulemaking will be undertaken as necessary.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This rule allows smaller olives to be used in the production of limited-use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum quality and size requirements specified in *Olive Regulation 1* (7 CFR § 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Customs Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the U.S. Standards for Grades of Canned Ripe Olives. The term does not include Spanish-style green olives.

Any lot of olives failing to meet the import requirements may be exported, disposed of, or shipped for exempt uses. Exportation or disposal of such olives would be accomplished under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the

disposal of the olives borne by the importer. Exempt olives are those imported for processing into oil or donation to charity. Any person may also import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these quality and size requirements.

This interim final rule modifies paragraph (b)(12) of the olive import regulation to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited-use styles. Such authority would be on a continuing basis, rather than on an annual basis, as has been done in previous years.

This interim final rule also modifies paragraphs (b)(12)(i) through (b)(12)(v) by relaxing the minimum sizes of olive permitted to be imported for limited use.

Permitting the use of smaller olives in the production of limited-use styles will allow importers to better take advantage of the strong market for sliced, wedged, halved, and chopped style olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements.

The two largest exporters of ripe and bulk olives to the United States are Spain and Mexico, respectively. Imports comprise approximately 50 percent of total annual U.S. consumption.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that this interim final 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 30 days after publication in the Federal Register because: (1) The 1996-97 crop year begins on August 1, 1996, and this rule needs to become effective as soon as possible to cover as much of the crop as possible; (2) this rule relaxes minimum size requirements; (3) California olive handlers are aware of this rule as it was discussed and recommended at a public meeting; and (4) this rule provides a 30-day comment period and any comments

received will be considered prior to finalization of this rule.

#### List of Subjects

#### 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

#### 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

#### PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.153 is revised to read as follows:

##### § 932.153 Establishment of grade and size requirements for processed olives for limited uses.

(a) *Grade.* On and after August 1, 1996, any handler may use processed olives of the respective variety group in the production of limited-use styles of canned ripe olives if such olives were processed after July 31, 1996, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1996, any handler may use processed olives in the production of limited-use styles of canned ripe olives if such olives were harvested after August 1, 1996, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1996.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least  $\frac{1}{105}$  pound: *Provided*, That no more than 35 percent of the olives in any lot or subplot may be smaller than  $\frac{1}{105}$  pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least  $\frac{1}{180}$  pound: *Provided*, That no more than 35 percent of the olives in any lot or subplot may be smaller than  $\frac{1}{180}$  pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least  $\frac{1}{205}$  pound: *Provided*, That not to exceed 35 percent

of the olives in any lot or subplot may be smaller than  $\frac{1}{205}$  pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least  $\frac{1}{180}$  pound: *Provided*, That not to exceed 35 percent of the olives in any lot or subplot may be smaller than  $\frac{1}{180}$  pound.

#### PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.401 is amended by revising paragraph (b)(12) to read as follows:

##### § 944.401 Olive Regulation 1.

\* \* \* \* \*

(b) \* \* \*

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported after August 1, 1996, for limited-use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than  $\frac{1}{105}$  pound (4.3 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than  $\frac{1}{180}$  pound (2.5 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than  $\frac{1}{205}$  pound (2.2 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller than  $\frac{1}{180}$  pound (2.5 grams) each.

(v) Whole ripe olives not identifiable as to variety or variety group of a size that not more than 35 percent of olives, by count, may be smaller than  $\frac{1}{205}$  pound (2.2 grams) each.

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Dated: July 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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