Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1620

District of Columbia, Employment benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as set forth below:

PART 1620—CONTINUATION OF ELIGIBILITY

1. The authority citation for part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474 and 8432b; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 100–238, 101 Stat. 1744; Pub. L. 100–659, 102 Stat. 3910; Pub. L. 101–508, 104 Stat. 1388; Pub. L. 104–106, 110 Stat. 186; Pub. L. 104–134, 110 Stat. 1321.

2. Section 1620.110 is revised to read as follows:

§ 1620.110 Scope.

The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) was established by the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 97, which was amended by the Omnibus Consolidated Rescissions and Appropriations Act of 1996, section 153, Pub. L. 104–134, 110 Stat. 1321. Although the Authority is an agency of the District of Columbia Government, certain of its employees may elect Federal Employees' Retirement System (FERS) or Civil Service Retirement System (CSRS) coverage. This subpart governs participation in the Thrift Savings Plan (TSP) by employees of the Authority who elect to be covered by FERS or CSRS.

3. Section 1620.111 is amended by revising the definition of *Basic pay* to read as follows:

§ 1620.111 Definitions.

* * * * *

Basic pay means basic pay as defined in 5 U.S.C. 8331(3), and it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

* * * * *

4. Section 1620.112 is revised to read as follows:

§ 1620.112 Eligibility requirements.

To be eligible to participate in the TSP, an employee of the Authority must be covered by FERS or CSRS pursuant to the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended.

5. Section 1620.114 is revised to read as follows:

§ 1620.114 Employee contributions.

(a) An employee of the Authority who is separated from Federal service for less than 31 full calendar days before commencing employment with the Authority and who is covered by FERS or CSRS will be eligible to contribute to the TSP as though he or she had transferred to the Authority from the losing Federal agency, *i.e.*, as though the employee did not have a TSP separation as defined by the TSP.

(b) An employee of the Authority who is separated from Federal service for 31 or more full calendar days before commencing employment with the Authority and who is covered by FERS or CSRS will be eligible to contribute to the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the first open season (as determined in accordance with paragraph (d) of this section) beginning after the date the employee commences employment with the Authority.

(2) If the employee was not previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (d) of this section) beginning after the date the employee commences employment with the Authority.

(c) An employee of the Authority with no period of prior Federal service who elects to be covered by FERS will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (d) of this section) beginning after the effective date of the FERS coverage.

(d) If an employee of the Authority who is described in paragraphs (b) and (c) of this section is employed by the Authority during an open season but before the election period (the last calendar month of the open season), that open season will be considered the employee's first open season.

(e) TSP employee contributions from employees of the Authority are subject to the limits described at 5 CFR part 1600, subpart C.

6. Section 1620.118 is revised to read as follows:

§ 1620.118 Failure to participate or delay in participation.

If an employee of the Authority who elects to be covered by FERS or CSRS fails to participate or is delayed in participating in the TSP because of a delay in the implementation of the Act, the employee may request that retroactive corrective action be taken in accordance with 5 CFR part 1605, as though the delay were attributable to employing agency error. Lost earnings shall be payable pursuant to 5 CFR part 1606 due to delay described in this section, as though the delay were attributable to employing agency error.

[FR Doc. 96–27548 Filed 10–24–96; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV96–932–3FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule authorizing the use of smaller-sized olives in the production of limited-use styles for olives grown in California. This final rule allows more olives into market channels and is consistent with current market demand for olives. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this final rule also changes the olive import regulation so that it conforms with the requirements established under the California olive marketing order.

EFFECTIVE DATE: November 25, 1996.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, telephone (209) 487–5901; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 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, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final 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 final 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 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 8c(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 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 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (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 under the Act are based on those established under Federal marketing orders.

There are 4 handlers of California olives who are subject to regulation under the marketing order and approximately 1,200 olive producers in California. There are also approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. None of the domestic olive handlers may be classified as small entities. The majority of 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 the increasing market demand for such olives. Annual domestic shipment data for olives indicate that for the last 5 seasons (1991 to 1995), limited-use style shipments ranged from 35 percent to 41 percent of the 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.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was issued on July 31, 1996, and published in the Federal Register (61 FR 40507, August 5, 1996), with an effective date of August 8, 1996. That rule amended § 932.153 of the rules and regulations in effect under the order, and § 944.401 of the import regulations. That rule authorized the use of smaller-sized limited-use olives under the order and for importation into the United States. That rule provided a 30-day comment period which ended September 4, 1996. No comments were received.

Nearly all of the olives grown in the United States are produced in California. California olives are used for canned black ripe whole, whole pitted, and sliced olives which are eaten out of hand as hors d'oeuvres, or used as an ingredient in cooking, in salads, or on pizzas. 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) indicated that the 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 use 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 through 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 use of such fruit for limited-use styles was not recommended by the committee for the 1994–95 season. 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 certain 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 should, therefore, improve grower returns and help handlers meet the increasing need 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 sizes 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 the handlers will need undersized olives on a continuing basis to meet the market demand for limited-use styles of canned olives.

To effectuate this change, Section 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 such as sliced, wedged, halved and chopped 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 frozen or acidified forms, or 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 allows handlers to take advantage of the strong market for sliced, wedged, halved, and chopped style 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 Custom 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 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 will be on a continuing basis, rather than on an annual basis, as has been done in previous years.

This 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 styles.

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 final rule.

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 40507, August 5, 1996) will tend to effectuate the declared policy of the Act.

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:

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 61 FR 40507 on August 5, 1996, is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR part 944, which was published at 61 FR 40507 on August 5, 1996, is adopted as a final rule without change.

Dated: October 18, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–27456 Filed 10–24–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1137

[DA–96–13]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk order. Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs, requested the suspension. The suspension will make it easier for handlers to qualify milk for pool status and will prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market.

EFFECTIVE DATES: The suspension to § 1137.7 is effective from September 1, 1996, through February 28, 1997. The suspensions to § 1137.12 are effective September 1, 1996, through August 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 30, 1996; published September 6, 1996 (61 FR 47092).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a milk marketings guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy farmers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1996, 429 dairy farmers were producers under the Eastern Colorado milk order. Of these, all but 108 would be considered small businesses, having less than 326,000 pounds of milk marketings a month. Of the dairy farmers in the small business category, 181 marketed less than 100,000 pounds of milk, 105 marketed between 100,000 to 200,000 pounds, and 35 marketed between 200,000 to 326,000 pounds of milk during June.

There were 10 handlers operating 11 plants for the month of June 1996 which were pooled, or regulated, under the Eastern Colorado order. The individual plants, for the most part, would meet