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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–2 FIR]

Olives Grown in California; Modification to Handler Membership on the California Olive Committee

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 modifying the handler membership on the California Olive Committee (committee). The committee locally administers the California olive marketing order (order) which regulates the handling of olives grown in California. The committee is composed of 16 industry members of which 8 are producers and 8 are handlers. Previously, handler membership was allocated between cooperative marketing organizations and independent handlers (handlers not affiliated with cooperatives), and the number of handler members who may have been affiliated with any one handler was limited to two. This rule continues in effect the removal of the distinction between cooperative and independent handlers, continues in effect the removal of the limitation on handler affiliation, and continues in effect the reallocation of handler membership on the basis of the total quantity of olives handled. These modifications will allow two vacant handler member positions on the committee to be filled. This rule was unanimously recommended by the committee.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this 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 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 608c(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 the date of the entry of the ruling.

Section 932.25 of the order provides for the establishment of the committee to locally administer the terms and provisions of the order. The committee is composed of 16 industry members, each with an alternate. Of the 16 industry members, 8 are producers and 8 are handlers. This section also specifies how the handler membership on the committee is allocated. Authority is provided for the committee, with the approval of the Secretary, to change the allocation of both producer and handler members as may be necessary to assure equitable representation.

Section 932.159 of the administrative rules and regulations provides that two members shall represent cooperative marketing organizations and six members shall represent handlers who are not cooperative marketing organizations. In addition, § 932.160 limits to two the number of handler members that may be affiliated with the same handler.

The committee met on December 10, 1998, and unanimously recommended modifying the rules and regulations to remove the distinction between cooperative and independent handlers, and increase the limitation on the number of handler members that may be affiliated with the same handler. It also unanimously recommended that the two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and the preceding crop year be represented by three members each, and that the third largest handler be represented by two members. This rule continues in effect the modification of the committee's handler membership to reflect changes within the handler segment of the industry, and to enable the committee to operate at full strength; i.e., with all eight handler and producer positions filled.

The structure of the olive industry has changed over the years and the number of handlers, both cooperative and independent, has decreased. At one time, there were a number of cooperative marketing organizations and independent handlers and the committee's structure was designed so that four of the eight handler seats were held by cooperatives and four were held by independents. This representation was also weighted by the volume of olives handled so that if one group, either cooperatives or independents, handled 65 percent or more of the total industry's volume handled during the nominating crop year and the preceding crop year, that group would have five seats on the committee and the other group would have three seats.

In 1993, handler membership on the committee was reallocated to reflect changes within the industry. The number of industry handlers declined to only five handlers—one cooperative and four independents. At that time, § 932.159 of the order's rules and regulations was modified to reapportion handler membership to provide cooperative handlers with two seats on the committee and independent handlers with six seats.

Since 1993, the number of handlers in the olive industry has continued to decline. Today there are three handlers remaining—one cooperative and two independents. Because there is only one existing cooperative, the committee believes that the distinction regarding cooperative and independent handlers on the committee is no longer appropriate or necessary.

Additionally, prior to the issuance of the interim final rule, § 932.160 specified that no more than two nominees for member and alternate member positions may be affiliated with the same handler. Because there are only three handlers remaining in the industry, this restriction resulted in two vacant handler positions on the committee that could not be filled.

To allow these positions to be filled and enable the committee to operate at full strength, the committee recommended that § 932.159 be revised to eliminate the distinction between cooperative marketing organizations and independent handlers (or handlers not affiliated with a cooperative marketing organization). It also recommended that the eight handler seats on the committee be reallocated based on the total volume of olives handled during the crop year in which nominations are made and the preceding crop year, with the handlers handling the first and second largest volume being represented with three members each, and the remaining handler being represented with two members.

The reallocation of handler membership in § 932.159 makes the two-nominee limitation on affiliation with the same handler specified in § 932.160 unnecessary, and that section is continued to be removed.

These changes are designed to modify the committee's handler membership to reflect structural changes within the handler segment of the industry, and to remove the former barriers to filling the two vacant handler positions on the committee.

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. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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.

There are 3 handlers of California olives who are subject to regulation under the marketing order and approximately 1,200 olive producers in the regulated area. Small agricultural service firms 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 having annual receipts of less than $500,000. None of the olive handlers may be classified as small entities.

Based on a review of historical and preliminary price and marketing information, total grower revenue for the 1998–99 crop year (August 1 through July 31) is estimated to be approximately $39,500,000, and the average grower revenue will be approximately $33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This rule continues in effect the modification of the order's administrative rules and regulations regarding the structure of handler membership on the committee. The committee locally administers the order and is composed of 16 industry members. Eight of the 16 industry members are producers and 8 are handlers. Previously, handler membership provisions distinguished between cooperative marketing organizations and independent handlers specifying that two members shall represent cooperative marketing organizations and six members shall represent handlers who are not cooperative marketing organizations. The handler nominee provisions also specified that no more than two nominees for handler member and alternate member positions may be affiliated with the same handler.

This rule also continues in effect the modification of the order's rules and regulations to remove the distinction between cooperative and independent handlers, and to specify that the number of members representing each of the three currently existing industry handlers shall be based on the total volume of olives handled during the nominating crop year and the preceding crop year, with the two handlers handling the largest and second largest volume of olives represented by three members and alternates each, and the remaining handler represented by two members and alternates. In addition, this rule continues in effect the removal of provisions limiting the number of members to which each handler is entitled because the limitation is no longer necessary. The changes were unanimously recommended by the committee and are intended to modify the committee's handler membership to reflect structural changes within the handler segment of the industry, and to remove former barriers to filling two vacant handler positions on the committee. Authority for this rule is provided in § 932.25 which allows the committee, with the approval of the Secretary, to reallocate the committee's producer or handler membership as necessary to assure equitable representation.

Continuing in effect the removal of the distinction between cooperative and independent handlers will not have any impact on handlers or producers in the California olive industry.

One alternative to this rule discussed at the meeting was to leave the language in § 932.159 unchanged; however, the committee believed that the distinction between cooperative and independent was no longer appropriate, because there is only one existing cooperative in the industry and two independent handlers. Another alternative discussed at the meeting was to leave § 932.160 of the order's rules and regulations unchanged so that only two members may be affiliated with the same handler, but with only three handlers currently in the industry that would have resulted in uneven representation between growers with eight members and

handlers with six members, and would have failed to assure equitable representation on the committee as is required pursuant to § 932.25.

This rule will not impose any additional reporting or recordkeeping requirements on any of the three 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. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. All three industry handlers are currently represented on the committee and participated in the deliberations.

An interim final rule concerning this action was published in the **Federal Register** on January 28, 1999. The committee staff advised each handler of such publication by personal contact. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 60-day comment period, which ended March 29, 1999. No comments were received.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 4286), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 64 FR 4286 on January 28, 1999, is adopted as a final rule without change.

Dated: April 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–10773 Filed 4–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV99–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1998–99 Marketing Year

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 which established interim and final free and restricted percentages for domestic inshell hazelnuts for the 1998–99 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 1220 SW. Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202)720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this rule apply to all merchantable hazelnuts handled during the 1998–99 marketing year (July 1, 1998, through June 30, 1999). 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 608c(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 the date of the entry of the ruling.

This rule continues in effect marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal''