

Major expense categories for the 1995-96 fiscal year include \$6,064,163 for advertising, \$417,934 for contingency, \$323,422 for winter pear improvement, and \$147,152 for salaries.

While this action 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 should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations 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 and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee began July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable winter pears handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at public meetings and which is similar to budgets 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 action.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

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

2. A new § 927.235 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 927.235 Expenses and assessment.

Expenses of \$7,384,440 by the Winter Pear Control Committee are authorized and an assessment rate of \$0.405 per standard box, or equivalent, on assessable winter pears is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: August 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

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7 CFR Parts 932 and 944

[Docket No. FV95-932-1IFR]

Olives Grown in California and Imported Olives; Establishment of Limited Use Olive Grade and Size Requirements During the 1995-96 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the use of smaller sized olives in the production of limited use styles for California olives during the 1995-96 crop year. This rule is intended to allow more olives into fresh 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 rule also changes the import regulation so that it conforms with the requirements established under the California olive marketing order.

DATES: Effective August 21, 1995; comments received by September 18, 1995 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, DC 20090-6456; telephone (202) 720-5127.

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 12778, 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 Administrator of 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 issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of California olives who will be 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.

Nearly all of the olives grown in the United States are produced in California. California olives are primarily used for canned black ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or 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) indicated that 1994-95 production totalled about 80,925 tons. Total production for the 1995-96 crop year is estimated to be 75,500 tons. This is the first time that there have been two consecutive years of declining production. The unprecedented and unusual rains, poor pollination, and

cool weather during the Spring of this year have resulted in a lower than normal fruit crop set on the trees.

Olive trees generally need to restore their nutrients from one season to the next, resulting in various varieties of olives produced in California having 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. 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 crushing for oil. Returns to producers are lower on fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was promulgated in 1965.

This rule will help growers and handlers meet the growing market demand for limited use style olives based upon current conditions. This demand can be illustrated in the record of shipments of sliced olives in the previous three years. Shipments of one type of limited use style fruit (sliced) totalled over 29,000 tons in the 1992-93 season, 34,000 tons in the 1993-94 season, and an estimated 30,000 tons in the 1994-95 season. 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.

On July 12, 1995, the committee recommended, by a unanimous vote, establishment of grade and size regulations for limited use size olives during the 1995-96 crop year pursuant to paragraph (a)(3) of § 932.52 of the order.

Based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1995-96 crop year to meet market demand for limited use styles of canned olives. 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 wedges, halves, slices, or segments. 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 crushing into 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 the smaller olives in the production of limited use styles allows handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements.

Also, the committee estimates that production for this crop year is expected to be at 75,500 tons, which is smaller than the previous two seasons. The 1993-94 and 1994-95 crop years produced larger crops of 120,049 tons, and 80,925 tons, respectively.

During years with large olive crops, the ratio of limited use size olives to other sizes tends to be higher; there may be more limited use size olives in proportion to the other sizes. During years with small olive crops, the ratio of smaller olives to other sizes tends to be smaller; there may be fewer limited use size olives in proportion to the other sizes. The increased availability of limited use size fruit can be reflected in handler processing for the last three seasons. For example, during the 1992-93 crop year, 19 percent of the olives (31,175 tons) received by handlers were classified as limited use sizes as compared with 16 percent of the olives (19,465 tons) in 1993-94, and an estimated 9 percent of the olives (7,047 tons) in 1994-95. Thus, due to the poor pollination and sporadic fruit set of the 1995-96 crop, fewer limited use size olives are expected to be available for harvest. The percentage of limited use size olives available to handlers is, therefore, expected to be smaller.

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 for 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 grade 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 grade 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 during the 1995-96 crop year.

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 halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this rule, the smaller fruit could not be imported for limited uses, and would have to be disposed of through less profitable, non-canning uses under the supervision of the inspection service, exported, or utilized in exempt outlets.

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

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 1995-96 crop year began August 1, 1995, and this rule needs to become effective as soon as possible to cover as much as 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 unanimously recommended by the committee 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. In §932.153, the section heading and paragraphs (a), (b) introductory text, and (b)(1) are revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1995-96 crop year olives for limited uses.

(a) *Grade.* On and after August 1, 1995, 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, 1995, and meet the grade requirements specified in §932.52(a)(1) as modified by §932.149.

(b) *Sizes.* On and after August 1, 1995, any handler may use processed olives in

the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1995, through July 31, 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, 1995, or after July 31, 1996.

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PART 944—FRUITS; IMPORT REGULATIONS

3. In §944.401, paragraph (b)(12) introductory text is revised 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 during the period August 1, 1995, through July 31, 1996, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

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Dated: August 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

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7 CFR Part 959

[Docket No. FV95-959-2IFR]

Onions Grown in South Texas; Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures under Marketing Order No. 959 for the 1995-96 fiscal period. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers. **DATES:** Effective beginning August 1, 1995, through July 31, 1996. Comments received by September 18, 1995, will be considered prior to issuance of a final rule.