

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99-932-3 PR]

Olives Grown in California; Revisions to Handling Requirements and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on revisions to the handling requirements under the California olive marketing order and announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. The olive marketing order regulates the handling of olives grown in California, and is administered locally by the California Olive Committee (committee). This rule would establish exemption and safeguard requirements for handlers desiring to ship a small portion of their olives as new packaged olive products for test marketing and market development projects. If implemented, this rule would help provide uniform procedures under the order and improve overall program administration.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. 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, 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, Fruit and Vegetable Programs, 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 proposal is issued under Marketing Agreement No. 148 and Marketing 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 of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 proposal invites comments on revisions to handling requirements under the order for olives grown in California. The revision would implement procedures and reporting requirements for handlers desiring to use a small portion of their olives to test market and initiate market development projects for new packaged olive products. The procedures include completion and submission of a new form, the COC Form 155, and approval by committee staff. This rule also announces AMS's intention to request a revision to the currently-approved information collection requirements issued under the marketing order.

Sections 932.51 and 932.52 of the olive marketing order authorize regulatory requirements regarding the handling of California packaged olives. Such requirements include incoming and outgoing handling requirements with regard to quality, size, and style of olives. Certain of these requirements are implemented under § 932.149. Styles of olives include whole, pitted, sliced, segmented (wedged), halved, chopped, and broken pitted. Under this proposal, handlers would be permitted to use other styles of olives and to add other ingredients to the finished product, such as flavorings, pieces of garlic, or jalapeno peppers.

Section 932.55 of the order provides authority for exempting from any or all requirements handlers handling olives which are used for specified purposes, including shipments of olives used to facilitate the conduct of marketing research and development projects. Section 932.55 of the order also provides authority for the committee to recommend rules, regulations, and safeguards necessary to ensure that

olives exempted under the provisions of this section are handled only as authorized.

Section 932.155 of the order's rules and regulations provides specific safeguards for certain special purpose shipments of packaged olives. However, these regulations do not include requirements and procedures related to shipping packaged olives for test marketing and market development. In the past, the committee has on occasion approved such marketing projects. This rule proposes revising § 932.155 for the purpose of clarifying the language and to include an exemption and safeguards in the rules and regulations for shipments of new packaged products for test marketing and market development. This would clarify existing practices in the regulations, and would establish uniform procedures for all handlers to ensure that the handling of new product packaged olives exempted under the provisions of § 932.155 will be handled only as authorized. Such new products could include packaged olives of different styles than those earlier mentioned containing various ingredients or flavorings, such as pieces of garlic, or jalapeno peppers.

The proposed rule includes a new form, the COC 155. Prior to engaging in test marketing and initiating market development projects for a new product, a handler would be required to file the COC 155 with the committee. The form includes: (1) The name and address of the requesting handler; (2) the quantity of olives to be utilized (limited to not more than five percent of the applicant handler's crop year acquisitions); (3) specific market outlet; (4) flavorings or other ingredients added to the olives; (5) style of olives used; (6) type of olives used, either black or green ripe; (7) container sizes; (8) varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.; (9) sizes of olives utilized; (10) approximate dates on which the new product will be packaged; (11) place of inspection; (12) certification that all assessments and reporting in effect under the marketing order will be met prior to shipment; (13) certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service; (14) purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and (15) an estimate of the amount of time required to complete the market-test. The committee shall promptly approve or deny the application, and may add limitations to any such approval.

Any product remaining at the end of the test-market period shall be disposed of according to paragraph (a) of § 932.155, which specifies procedures for disposing of packaged olives in the production of olive oil, donating to a charitable organization, and by dumping.

On December 10, 1998, the committee met to discuss the recommendation. Additional discussion occurred at various subcommittee meetings prior to the December 10, 1998, committee meeting.

According to the committee, demand for packaged olives has remained relatively stagnant in recent years. The committee believes that to improve returns to producers and handlers, handlers must have the flexibility to respond to shifting trends in the marketplace by test marketing new products. Handlers must be allowed the opportunity to try marketing innovative new products free from certain marketing order obligations, such as style and flavor requirements, which appear to be too restrictive for these new products. Such shipments, will, therefore, be exempt from the requirements of § 932.149. Because it appears that such shipments can comply with all other order requirements, they will remain applicable. This would allow the handlers to respond to marketing opportunities and requests from buyers, which could result in increased olive sales. In addition, since handlers have large amounts of capital invested in their processing plants, any increase in the amount of olives processed yields a reduction of per unit processing costs, which is a benefit to handlers and producers.

It has been the industry's experience that the ability to ship new products for test marketing and market development helps to encourage handlers to develop new product lines. The committee believes that this option should continue to be available, allowing handlers to take advantage of additional marketing opportunities to expand the market for processed olives. Adding procedures to the rules and regulations will help clarify the existing practice, and will provide uniform requirements for handlers.

Therefore, when the committee met in December, it unanimously recommended modifying the rules and regulations to specify procedures and reporting requirements to permit handlers to ship a small portion of their olives for new packed olive products for test marketing and market development projects. In addition, the committee recommended development of a new

form, the COC Form 155, that handlers interested in test marketing and market development projects for new olive products must complete and file with the committee.

The information supplied by the applicant handler would provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the Inspection Service is aware of the product.

The new COC Form 155 will require a revision in the information collection requirements under the order. It is estimated that COC Form 155 would require 20 minutes for the applicant handlers to complete. It is expected that this could result in an increased reporting burden to handlers. The increased burden is estimated to be 20 minutes per handler annually. If all three handlers applied, the COC Form 155 would add 1 hour in total annual hours to the current response burden.

The information collection requirements contained in the referenced § 932.155 will require approval by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial 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 subject to regulation under the order and approximately 1,200 producers of olives 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. The majority of producers may be classified as small entities.

A review of historical and preliminary information pertaining to the current fiscal year (January 1 through December 31) indicates that the total grower revenue for the 1999 crop year (August

1 through July 31) is estimated to be approximately \$39,500,000, and the average grower revenue approximately \$33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This rule would revise § 932.155 to include requirements for handlers desiring to ship olives to test markets and initiate market development projects for small quantities of new olive products. This rule would also reformat § 932.155 for purposes of clarity.

An alternative to this action would be to maintain the status quo, whereby the regulations would not address the needs of handlers desiring to ship new products for test marketing and market development. However, the committee and the Department believe that regulations should be modified to address these needs. This would help ensure uniform requirements and procedures are followed by handlers who desire to test market and initiate market development projects. Such activity could ultimately result in increasing sales of processed olives.

Under this proposed rule, the committee would review written requests from handlers interested in test marketing and market development of new product lines. Such requests would be made on a new form, the COC 155, which would require uniform information from all applicant 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. This new form is anticipated to be utilized when handlers have developed new product lines which they desire to test market. Accordingly, this action would impose an additional reporting or recordkeeping requirement on three olive handlers by requiring COC Form 155 to be filed prior to the test marketing of a new canned olive product. The form is estimated to take approximately 20 minutes to complete. There are only three handlers regulated under the order, and the additional burden created by the use of this form by all handlers is estimated to be 1 annual hour.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the committee's meeting was widely publicized throughout the olive industry and all interested persons were encouraged 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 encouraged to express views on this issue. The committee is comprised of 16 members, of which 8 are producers and 8 are handlers. Each of the three handler entities is presently represented on the committee. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request a revision to a currently approved information collection for olives grown in California, Marketing Order No. 932.

Title: Olives Grown in California, Marketing Order 932.

OMB Number: 0581-0142.

Expiration Date of Approval: October 31, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California olive marketing order program, which has been operating since 1965.

The California olive marketing order authorizes the issuance of quality, size, and inspection requirements. The order also has authority for research and development projects, including paid advertising. Pursuant to section 8e of the Act, import grade and size requirements are implemented on olives imported into the United States.

The order and its rules and regulations authorize the California

Olive Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to olive supplies, shipments, dispositions, and other information necessary to effectively carry out the purpose of the Act and the order. California olives are shipped year-round and these forms are used accordingly.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed collection consists of a requirement for handlers to file a form with the committee for approval to ship new olive products to be test marketed.

The committee believes that to improve returns to producers and handlers, handlers should be encouraged to look for outlets for new product lines. One method to encourage development of new products is to continue to allow test marketing of such products by including authority in the rules and regulations that is uniformly applied to all handlers. The information supplied by the applicant handler would provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the inspection service is aware of the product.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/3 hour per response.

Respondents: California olive handlers.

Estimated Number of Respondents: 3
Estimated Number of Responses per Respondent: one annually.

Estimated Total Annual Burden on Respondents: 1 hour.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the

information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0142 and California Olive Marketing Order No. 932, and be sent to the USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address and will become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All responses to this notice will be summarized and included in the request for OMB approval.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

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

2. In § 932.155, paragraphs (a) and (b) are revised to read as follows:

§ 932.155 Special purpose shipments.

(a) The disposition of packaged olives covered by § 932.152(d) which are not reprocessed, and new packaged olive products covered under paragraph (b) of this section which have not been disposed of by the end of the test market period, shall be handled in conformity with the applicable provisions of this paragraph.

(1) Under supervision of the Inspection Service, such packaged olives may be disposed of for use in the production of olive oil or dumped.

(2) Such packaged olives may be disposed of to a charitable organization for use by such organization, provided the following conditions are met:

(i) Any handler who wishes to so dispose of olives shall first file a written application with, and obtain written approval thereof from, the committee.

Each such application shall contain at least:

(A) The name and address of the handler and the charitable organization;

(B) The physical location of the charitable organization's facilities;

(C) The quantity in cases, the variety, size, can size, and can code of the packaged olives; and

(D) A certification from the charitable organization that such olives will be used by the organization and will not be sold.

(ii) Prior to approval, the committee shall perform such verification of the accuracy of the information on the application as it deems necessary. The committee may deny any application if it finds that the required information is incomplete or incorrect, or has reason to believe that the intended receiver is not a charitable organization, or that the handler or the organization has disposed of packaged olives contrary to a previously approved application. The committee shall notify the applicant and the organization in writing of its approval, or denial, of the application. Any such approval shall continue in effect so long as the packaged olives covered thereby are disposed of consistent with this section. The committee shall notify the handler and the organization of each such termination of approval. The handler shall furnish the committee upon demand such evidence of disposition of the packaged olives covered by an approved application as may be satisfactory to the committee.

(b) In accordance with the provisions of § 932.55(b), packaged olives to be used in marketing development projects may be handled without regard to § 932.149 provided the following conditions are met. Such olives must be identified to the satisfaction of the Inspection Service and kept separate from other packaged olives. The handler shall submit to the committee for its approval "COC Form 155" at least 10 working days prior to the shipment of such packaged olives to test markets, and report progress or changes to the committee, as requested. The applicant handler shall provide the following information on COC Form 155:

(1) The quantity of olives to be utilized (limited to not more than five percent of the handler's crop year acquisitions);

(2) Specific market outlet;

(3) Flavorings or other ingredients added to the olives;

(4) Style of olives used;

(5) Type of olives used, either black or green ripe;

(6) Container sizes;

(7) Varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.;

(8) Sizes of olives utilized;

(9) Approximate dates when the new product will be packaged;

(10) Name and address of requesting handler;

(11) Place of inspection;

(12) Certification that all assessment and reporting requirements in effect under the marketing order will be met prior to shipment;

(13) Certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service;

(14) Purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and

(15) An estimate of the amount of time required to complete the test. The committee shall promptly approve or deny the application, and may add limitations to any such approval. Upon approval, the applicant handler shall notify the Inspection Service. Packaged olives so identified and remaining unused at the end of the approved test-market period shall be disposed of according to paragraph (a) of this section.

* * * * *

Dated: October 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-27744 Filed 10-25-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-201-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-