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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV96-932-2 FR]

Olives Grown in California and Imported Olives; Establishment of Minimum Quality Requirements for California and Imported Olives, and Revision of Outgoing Inspection Requirements and Procedures for California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum quality requirements for California olives under Marketing Order 932 and imported olives by replacing grade requirements which have been based on the U.S. Standards for Grades of Canned Ripe Olives (standards). This final rule also revises outgoing inspection requirements and procedures for California olives. This action is expected to result in reduced handling costs, especially inspection costs, and improved consumer satisfaction.

EFFECTIVE DATES: This final rule becomes effective January 13, 1997.

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 (209) 487-5901; Fax # (209) 487-5906; or Caroline Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC. 20090-6456; telephone (202) 720-8139; Fax # (202) 720-5698. 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 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing 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 provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically-produced commodities.

The Department of Agriculture (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 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.

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 issued under the Act are based on those established under Federal marketing orders.

There are 4 handlers of olives who are subject to regulation under the order, and approximately 1,350 producers of olives in the regulated area. There are 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 having annual receipts of less than \$500,000. None of the handlers is considered a small entity, but the majority of olive producers and some of the importers may be classified as small entities.

The California Olive Committee (committee) met on March 27, 1996, and unanimously recommended establishing minimum quality requirements to be incorporated within the rules and regulations of the order and revising outgoing inspection requirements and procedures. At a meeting on July 10, 1996, the committee recommended a change in their recommendations of March 27, 1996, with regard to an outgoing inspection requirement.

Incoming inspection requirements at § 932.51 require handlers to weigh and size-grade olives prior to processing, and dispose of non-canning size (undersized) olives into appropriate non-canning outlets. Such weighing and size-grading is done under the

supervision of the Federal or Federal-State Inspection Service. These requirements provide the basis for handler payments to producers, and ensure that olives are properly sized into the various canning and non-canning size categories.

Once the olives have been size-graded, they are stored in tanks, ensuring that the various sizes of olives remain segregated. Non-canning size olives are disposed of into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing inspection requirements at § 932.52 and § 932.149 specify the minimum quality of canned ripe olives as a modified U.S. Grade C as certified by inspectors of the USDA, Processed Products Branch (PPB). Certification as to grade provides handlers and their customers with a uniform level of quality familiar to both parties. The outgoing inspection requirements also ensure that canned ripe olives meet applicable size designations prior to shipment. Two methods of outgoing inspection are authorized: A Quality Assurance Program (QAP) approved by the PPB or in-line inspection.

This rule adds the option of lot inspection to assist handlers in reducing inspection costs. Currently, during in-line inspection, an inspector is required to be present any time olives are in the final stage of processing prior to packaging. The current cost for an inspector ranges from \$31.50 per hour for handlers in California under the marketing order to \$42.00 per hour depending on the contract. For an 8-hour day, the cost of one inspector ranges from \$252.00 to \$328.00. Because of this, handlers may benefit from economies of scale: the more canned olives packaged, the lower the cost per can of olives.

In 1994, QAPs were added as an option to reduce inspection costs. Under QAPs, savings are more likely to accrue to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from QAPs for similar reasons.

Adding lot inspection offers handlers a less-costly inspection option. During lot inspection, an inspector does not need to be present during the final processing, unlike in-line inspection. However, an inspector will inspect a statistical percentage of a lot of olives whether the lot is large or small. Thus, there is less benefit of economies of scale because for large lots more olives will be inspected and for small lots fewer olives will be inspected.

The committee recommended changes in some of the inspection requirements to reduce handlers' costs, especially the costs of inspection, and to address the concerns of consumers of canned ripe olives. The changes simplify the inspection process by eliminating steps which have been made unnecessary by modern olive processing and pitting equipment. This can reduce handling costs, including inspection costs, thereby improving returns to California producers and handlers.

The changes address consumer concerns, as identified through a 1995 consumer survey which the committee undertook. Surveyed consumers indicated that flavor, color, and character are quality criteria most important to them. The term "character" is used to include olive firmness, tenderness and texture. The changes address consumer concerns by evaluating quality based upon those criteria. This will help ensure that consumer satisfaction is met, benefitting the California olive industry, importers, and consumers.

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

Establishment of Minimum Quality Requirements

Currently, § 932.149 specifies that canned olives meet a minimum grade requirement of a modified U.S. Grade C. Additional specific requirements are established for the various styles of canned ripe olives, including whole, pitted, broken pitted, halved, segmented (wedged), sliced, and chopped styles. Section 932.149 references various definitions from the standards.

In place of these grades and definitions, the committee recommended a set of minimum quality requirements for four styles of canned olives: (1) Whole and pitted style olives; (2) sliced, segmented (wedged), and halved style olives; (3) chopped style olives; and (4) broken pitted olives. These quality requirements include criteria pertaining to flavor, saltiness, color, character, uniformity of size and freedom from defects. These factors are similar to those currently specified in the standards and handling regulations, and have been determined to be of importance to consumers through the committee's consumer survey.

Olives are currently graded based upon five factors: flavor, saltiness, color, character, and defects. Currently, Table

I in § 932.149 only sets limits for defects of canned ripe olives. Limits for the other four factors, flavor, saltiness, color, and character, are defined in the standards. In place of Table I, based upon information from the 1995 consumer survey, the committee recommended establishing four new tables which would specify the limits for defects for each of the canned ripe olive styles (whole and pitted styles; sliced, segmented (wedged), and halved styles; chopped style; and broken pitted style). The new tables also define the limits of the four characteristics (flavor, saltiness, color, and character) currently defined in the standards. The four new tables provide all the definitions and tolerances necessary to establish minimum quality requirements in place of grade requirements.

To effectuate the establishment of minimum quality requirements, references to "grade" in § 932.149 will be replaced with "quality", canned broken pitted olives will be defined separately in a new paragraph designated as (a)(4), and four new tables depicting minimum quality requirements for (1) canned whole and pitted olives; (2) canned sliced, segmented (wedged), and halved olives; (3) canned chopped style olives; and (4) canned broken pitted style olives will be added to § 932.149, replacing the current Table 1.

In conforming changes, the word "grade" will be replaced with the words "minimum quality" or "minimum quality requirements," as necessary, in § 932.150, § 932.152, § 932.153, and § 932.155.

Section 932.149(a)(2) currently sets the tolerance for identifiable pieces of pit caps, end slices, and slices at 5 percent, by weight, for canned chopped style olives. The committee recommended a relaxed tolerance of 10 percent, by weight, in an effort to encourage handlers to cut olives of the chopped style in larger pieces. The committee was concerned that canned chopped style olives are currently chopped too finely, rendering the product nearly an olive "flour" rather than identifiable pieces of olives consumers indicated they preferred. This change will reduce the costs of packing canned chopped style olives.

The committee recommended that the definition of "broken pitted" olives be modified from the definition provided in the standards. To accomplish this, the committee proposed a modified definition in § 932.149 of the regulations. The current definition is considered too restrictive by the committee. Under the current definition, broken pitted olives are

defined as "olives [which] consist substantially of large pieces that may have been broken in pitting but have not been sliced or cut." Currently, each handler packing broken pitted olives is prohibited from using olives which have been improperly pitted but unbroken because the olives have not been "broken" in the pitting process. (Improperly pitted olives do not contain pits or pit fragments.) Each such handler, therefore, pays an employee to "break" the unbroken, improperly pitted olives so that such olives meet the requirement for broken pitted olives. As recommended by the committee, the definition for broken pitted olives deletes the word "substantially," thereby permitting a greater percentage of unbroken, improperly pitted olives to be included in the broken pitted style category. Such change is intended to reduce the costs of packing broken pitted olives while maintaining the quality of the product.

The committee further recommended basing outgoing inspections on a pass-fail basis, eliminating the requirement that the inspection service certify that canned ripe olives are either Grade A, Grade B, or Grade C. Under a pass-fail outgoing inspection, canned ripe olives either meet the minimum quality requirements and pass inspection, or fail to meet the minimum quality requirements and not pass inspection. There will be no need to calculate the grade of each sample in order to assign Grade A, Grade B, or Grade C. Elimination of the requirement to certify to a grade will simplify the inspection of such olives, thereby reducing inspection time and overall inspection costs.

Authorized Methods of Outgoing Inspection

Pursuant to § 932.52 of the order and § 932.152 of the current outgoing regulations, handlers are required to maintain continuous in-line outgoing inspection or a certified QAP. Under continuous in-line outgoing inspection, at least one inspector must be present at all times when a plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products. The current cost for an inspector ranges from \$31.50 for handlers under the marketing order to \$42.00 per hour depending on the contract. For an 8-hour day the cost of one inspector ranges from \$252.00 to \$328.00.

By contrast, under a QAP, each certified plant has trained quality-control personnel who perform most of the same functions as a PPB inspector. The PPB inspectors continue to issue

certificates of inspection based upon the outgoing inspection records maintained by the certified quality-control personnel. These records are verified through spot-checks and samples taken by PPB inspectors.

A QAP may decrease outgoing inspection costs for a handler compared to inspection costs under continuous in-line outgoing inspection. However, cost savings under a QAP accrue more to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from a QAP for similar reasons. However, olive crop sizes may vary substantially from one year to the next due to the alternate-bearing characteristics. This variability further reduces the efficiency of operations at most of the olive processing plants and the cost-savings of QAP, since handlers' fixed costs must be paid independent of the size of the crop.

To enable handlers to minimize their inspection costs, the committee recommended that handlers be allowed to utilize any inspection method permitted by PPB, so that each may choose the method most economical for their operations. Thus, in addition to a QAP and in-line inspection, lot inspection will also be authorized for meeting outgoing inspection requirements. Under lot inspection, a specified number of containers of the same size and type, containing olives of the same type and style, at the same location, are inspected. Lot inspection occurs after processing, rather than during processing. Inspecting by lot has the potential to reduce costs for handlers because lot inspection does not require the presence of an inspector at all times while olives are being processed.

To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, are revised to add authority for handlers to use either continuous in-line outgoing inspection, QAP, or lot inspection. Because lot inspection does not require the presence of an inspector at all times during the processing of olives, paragraph (b)(1) is revised by deleting the final sentence, thereby removing the requirement that an inspector be present when olives are processed. This change is expected to reduce overall inspection costs by eliminating overtime hours which accrue when an inspector is required to remain in an olive processing plant at all times while processing is underway.

Outgoing Inspection for Size of Canning-Size Olives

The committee also recommended revising the current requirements that canning-size olives, which have been sized and stored in tanks prior to pitting, be inspected for size prior to packaging. Currently, such olives are required under incoming inspection requirements to be weighed and size-graded. Olives are then stored in tanks prior to processing. The outgoing requirements mandate that such olives be submitted for size inspection prior to packaging. However, handlers size olives upon receipt and keep the sizes separate throughout the packaging process because doing so facilitates more efficient operation of modern processing and pitting equipment. Eliminating the requirement for inspection for size prior to packaging will simplify the inspection process and reduce overall inspection costs while maintaining the integrity and quality of canned ripe olives.

To effectuate this change, paragraph (b)(2) of § 932.152 is deleted. This deletion necessitates the redesignation of paragraph (b)(1) as (b).

However, olives which are smaller than authorized for use as canned ripe olives (undersized olives) will still be held under surveillance by the inspection service, as required in the incoming inspection requirements and specified in paragraph (e)(2) of § 932.151, since handlers must dispose of such olives into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing Inspection for Size of Limited-Use Olives

Section 932.152, paragraphs (g)(1) and (g)(2), of the current outgoing regulations specify that olives used in the production of limited-use styles are not required to be submitted for an outgoing inspection for size prior to packaging if they were size-graded by the inspection service during the incoming inspection process. Limited-use styles include halved, segmented (wedged), sliced, or chopped styles. Typically, smaller olives may be used for limited-use styles rather than for whole styles.

According to the requirements of § 932.51(a)(ii) of the order, canning size olives are sized by the inspection service during the incoming inspection process. The olives are then either placed in storage tanks or sent immediately to processing.

Olives process more efficiently when all the olives in the processing tank are uniform in size. Modern, high-speed

pitting equipment produces higher yields and inflicts less damage to olives when the sizes being pitted are uniform. This is especially true for the smaller canning sizes. Currently, over 95 percent of all olives are pitted prior to packaging.

Olive handlers have an additional incentive to maintain strict control over various sizes of olives—retail customers' demands for uniform size and quality.

For those reasons, the committee recommended changes in § 932.152, paragraphs (g)(1) and (g)(2) to eliminate the requirement for inspection for size prior to packaging.

To effectuate the change, the words "without an outgoing inspection for size designation" are deleted from § 932.152, paragraphs (g)(1) and (g)(2).

These changes establish minimum quality requirements of flavor, saltiness, color, character, and defects for whole and pitted style olives; sliced, segmented (wedged), and halved style olives; chopped style olives; and broken pitted style olives. They also revise outgoing inspection requirements and procedures under the marketing order by eliminating requirements that sized and stored olives be submitted for sizing prior to packaging, and permitting lot inspection. These revisions eliminate requirements no longer deemed necessary, thereby reducing handling costs, while maintaining quality and size requirements needed to ensure customer satisfaction.

This rule also changes § 932.153 (as amended in the Federal Register on August 5, 1996, 61 FR 40507), which specifies current minimum grade and size requirements for limited use olives. All references to "grade" in that section are replaced by the words "minimum quality" or "minimum quality requirements," as necessary.

Olive Import Requirements

Section 8e 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 establishes minimum quality requirements to replace current minimum grade requirements for California olives under the marketing order. Therefore, a corresponding change is made in the olive import regulation.

This rule modifies paragraphs (a)(8), (b)(1), (g), and (j) of § 944.401 by deleting certain references to the standards and adding specific quality criteria for imported olives which are the same as those for California olives.

The proposed rule concerning this action was published in the November 8, 1996, Federal Register (61 FR 57782), with a 15-day comment period ending November 25, 1996. No comments were received.

Although no comments were received, the Department is making several changes in the regulatory text that appeared in the proposed rule for purposes of clarification.

In tables 1 through 4 of sections 932.149 and 944.401, with respect to color criteria, the proposed rule stated, in part, that olives must have "a color equal or darker than the comparator." This rule replaces the word "comparator" with the term "USDA Composite Color Standard." This is a more precise term for the standard used to determine the appropriate color of olives, and does not materially affect the color requirement. In table 1 of those same two sections, with respect to pits and pit fragments, the allowance of "Not more than 1.3 average by count" is changed to read "Not more than 1.3% by count." This is a clarifying change.

In section 932.152(c)(2)(xi), the word "standard" is replaced by the word "quality." This is a more accurate word.

Finally, a paragraph (5) is added to section 932.149(a) and a paragraph (v) is added to section 944.401(b) to provide a tolerance for olives that do not meet the quality criteria set forth in those sections. Absent such tolerances, one failed unit would result in an entire lot failing to meet the specified quality requirements. The tolerances specified are those that appear in the standards and that are currently used by the olive industry. The proposed rule did not contain such tolerances. Adding these provisions to the final rule corrects this oversight.

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

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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should be implemented as soon as possible since the crop year for olives grown in California began on August 1, 1996, and olives from the 1996 crop are already being processed and shipped. Further, handlers are aware of this rule, which

was recommended at two public meetings. Additionally, interested parties had the opportunity to comment on the proposed rule, and no comments were received.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

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

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

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

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

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.149 is revised to read as follows:

§ 932.149 Modified minimum quality requirements for specified styles of canned olives of the ripe type.

(a) Except as otherwise provided in this section, the minimum quality requirements prescribed in § 932.52(a)(1) are modified as follows, for specified styles of canned olives of the ripe type:

(1) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 1 of this section;

(2) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 2 of this section;

(3) Canned chopped olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 3 of this section; and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and,

(4) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 4 of this section;

(5) A lot of canned ripe olives is considered to meet the requirements of this section if all or most of the sample units meet the requirements specified in Tables 1 through 4 of this section: *Provided*, That the number of sample units which do not meet the

requirements specified in Tables 1 through 4 of this section does not exceed the acceptance number

prescribed for in the sample size provided in Table I of 7 CFR 52.38:

Provided further, That there is no off flavor in any sample unit.

TABLE 1.—WHOLE AND PITTED STYLE

[Defects by count per 50 olives]

| | |
|--|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| FLAVOR (Green Ripe Type) | Free from objectionable flavors of any kind. |
| SALOMETER | Acceptable Range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with not less than 60% having a color equal or darker than the USDA Composite Color Standard for Ripe Type. |
| CHARACTER | Not more than 5 soft units or 2 excessively soft units. |
| UNIFORMITY OF SIZE | 60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm. |
| DEFECTS: | |
| Pitter Damage (Pitted Style Only) | 15. |
| Major Blemishes | 5. |
| Major Wrinkles | 5. |
| Pits and Pit Fragments (Pitted Style Only) | Not more than 1.3 % average by count. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 1 unit per sample. |
| Mutilated | Not more than 3. |
| Mechanical Damage | Not more than 5. |
| Split Pits or Misshapen | Not more than 5. |

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES

[Defects by count per 255 grams]

| | |
|----------------------------------|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| SALOMETER | Acceptable Range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type. |
| CHARACTER | Not more than 13 grams excessively soft. |
| DEFECTS: | |
| Pits and Pit Fragments | Average of not more than 1 by count per 300 grams. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 2 units per sample. |
| Broken Pieces and End Caps | Not more than 125 grams by weight. |

TABLE 3.—CHOPPED STYLE

[Defects by count per 255 grams]

| | |
|------------------------------|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| SALOMETER | Acceptable Range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type. |
| DEFECTS: | |
| Pits and Pit Fragments | Average of not more than 1 by count per 300 grams. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 2 units per sample. |

TABLE 4.—BROKEN PITTED STYLE

[Defects by count per 255 grams]

| | |
|------------------------------|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| SALOMETER | Acceptable Range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type. |
| CHARACTER | Not more than 13 grams excessively soft. |
| DEFECTS: | |
| Pits and Pit Fragments | Average of not more than 1 by count per 300 grams. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 2 units per sample. |

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S.

Standards for Grades of Canned Ripe Olives (7 CFR part 52): Provided, That the definition of "broken pitted olives"

is as follows: "Broken pitted olives" consist of large pieces that may have

been broken in pitting but have not been sliced or cut.

3. Section 932.150 is revised to read as follows:

§ 932.150 Modified minimum quality requirements for canned green ripe olives.

The minimum quality requirements prescribed in § 932.52 (a)(1) of this part are hereby modified with respect to canned green ripe olives so that no requirements shall be applicable with respect to color and blemishes of such olives.

4. In section 932.152, paragraphs (a), (b), (c)(2), the heading of paragraph (d), (d)(1), (g)(1) introductory text (table remains unchanged), and (g)(2) introductory text (table remains unchanged) are revised to read as follows:

§ 932.152 Outgoing regulations.

(a) *Inspection stations.* Processed olives shall be sampled and inspected only at an inspection station which shall be any olive processing plant having facilities for in-line or lot inspection which are satisfactory to the Inspection Service and the Committee; or an olive processing plant which has an approved Quality Assurance Program in effect.

(b) *Inspection—General.* Inspection of packaged olives for conformance with § 932.52 shall be by a Quality Assurance Program approved by the Processed Products Branch (PPB), USDA; or by in-line or lot inspection. A PPB approved Quality Assurance Program shall be pursuant to a Quality Assurance contract as referred to in § 52.2.

(c) * * *

(2) The Inspection Service shall issue for each day's pack a signed certificate covering the quantities of such packaged olives which meet all applicable minimum quality and size requirements. Each such certificate shall contain at least the following:

- (i) Date;
- (ii) Place of inspection;
- (iii) Name and address of handler;
- (iv) Can code;
- (v) Variety;
- (vi) Fruit size;
- (vii) Can size;
- (viii) Style;
- (ix) Total number of cases;
- (x) Number of cans per case;
- (xi) And statement that packaged olives meet the effective minimum quality requirements for canned ripe olives as warranted by the facts.

(d) *Olives which fail to meet minimum quality and size requirements.* (1) Whenever any portion of a handler's daily pack of packaged olives fails to meet all applicable minimum quality

and size requirements, the Inspection Service shall issue a signed report covering such olives. Each such report shall contain at least the following:

- (i) Date;
- (ii) Place of inspection;
- (iii) Name and address of handler;
- (iv) Can code;
- (v) Variety;
- (vi) Fruit size;
- (vii) Can size;
- (viii) Style;
- (ix) Total number of cases;
- (x) Number of cans per case; and
- (xi) Reason why the applicable requirements were not met.

* * * * *

(g) *Size Certification.* (1) When limited-use size olives for limited-use styles are authorized during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(i), any lot of limited-use size olives may be used in the production of packaged olives for limited-use styles if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

(2) When limited-use size olives are not authorized for limited-use styles during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(ii), any lot of canning-sized olives may be used in the production of packaged olives for whole, pitted, or limited-use styles if such olives are within the average count range in Table III contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

5. In § 932.153, the section heading and paragraph (a) are revised to read as follows:

§ 932.153 Establishment of minimum quality and size requirements for processed olives for limited uses.

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

* * * * *

6. In § 932.155, paragraph (c) is revised to read as follows:

§ 932.155 Special purpose shipments.

* * * * *

(c) In accordance with the provisions of § 932.55(b), any handler may use processed olives in the production of packaged olives for repackaging, and ship packaged olives for repackaging, if the packaged olives meet the minimum quality requirements, except for the requirement that the packaged olives possess a reasonably good flavor: *Provided*, That the failure to possess a reasonably good flavor is due only to excessive sodium chloride.

PART 944—FRUITS; IMPORT REGULATIONS

7. In § 944.401, paragraphs (a)(8), (b)(1), (g), and (j) are revised to read as follows:

§ 944.401 Olive Regulation 1.

(a) * * *

(8) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR part 52) including the terms "size", "character", "defects" and "ripe type": *Provided*, That the definition of "broken pitted olives" is as follows: "Broken pitted olives" consist of large pieces that may have been broken in pitting but have not been sliced or cut.

(b) * * *

(1) *Minimum quality requirements.* Canned ripe olives shall meet the following quality requirements, except that no requirements shall be applicable with respect to color and blemishes for canned green ripe olives:

(i) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 1 of this section;

(ii) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements prescribed in Table 2 of this section;

(iii) Canned chopped olives of the ripe type shall meet the minimum quality requirements prescribed in Table 3 of this section and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and

(iv) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 4 of this section, *Provided*, That broken pitted olives consist of large

pieces that may have been broken in pitting but have not been sliced or cut.
 (v) A lot of canned ripe olives is considered to meet the requirements of this section if all or most of the sample units meet the requirements specified in

Tables 1 through 4 of this section: *Provided*, That the number of sample units which do not meet the requirements specified in Tables 1 through 4 of this section does not

exceed the acceptance number prescribed for in the sample size provided in Table I of 7 CFR 52.38: *Provided further*, That there is no off flavor in any sample unit.

TABLE 1.—WHOLE AND PITTED STYLE
 [Defects by count per 50 olives]

| | |
|--|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| FLAVOR (Green Ripe Type) | Free from objectionable flavors of any kind. |
| SALOMETER | Acceptable range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with not less than 60% having a color equal or darker than the USDA Composite Color Standard for Ripe Type. |
| CHARACTER | Not more than 5 soft units or 2 excessively soft units. |
| UNIFORMITY OF SIZE | 60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm. |
| DEFECTS: | |
| Pitter Damage (Pitted Style Only) | 15. |
| Major Blemishes | 5. |
| Major Wrinkles | 5. |
| Pits and Pit Fragments (Pitted Style Only) | Not more than 1.3% average by count. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 1 unit per sample. |
| Mutilated | Not more than 3. |
| Mechanical Damage | Not more than 5. |
| Split Pits or Misshapen | Not more than 5. |

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES
 [Defects by count per 255]

| | |
|----------------------------------|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| SALOMETER | Acceptable range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type. |
| CHARACTER | Not more than 13 grams excessively soft. |
| DEFECTS: | |
| Pits and Pit Fragments | Average of not more than 1 by count per 300 grams. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 2 units per sample. |
| Broken Pieces and End Caps | Not more than 125 grams by weight. |

TABLE 3.—CHOPPED STYLE
 [Defects by count per 255 grams]

| | |
|------------------------------|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| SALOMETER | Acceptable range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type. |
| DEFECTS: | |
| Pits and Pit Fragments | Average of not more than 1 by count per 300 grams. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 2 units per sample. |

TABLE 4.—BROKEN PITTED STYLE
 [Defects by count per 255 grams]

| | |
|------------------------------|--|
| FLAVOR | Reasonably good; no "off" flavor. |
| SALOMETER | Acceptable range in degrees: 3.0 to 14.0. |
| COLOR | Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type. |
| CHARACTER | Not more than 13 grams excessively soft. |
| DEFECTS: | |
| Pits and Pit Fragments | Average of not more than 1 by count per 300 grams. |
| Major Stems | Not more than 3. |
| HEVM | Not more than 2 units per sample. |

* * * * *

(g) It is hereby determined, on the basis of the information currently available, that the minimum quality requirements and size requirements set forth in this part are comparable to those applicable to California canned ripe olives.

* * * * *

(j) The minimum quality, size, and maturity requirements of this section shall not be applicable to olives imported for charitable organizations or processing for oil, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-449 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[FV96-985-3 IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1996-97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996-97 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

DATES: Effective on January 9, 1997 through May 31, 1997; comments received by February 10, 1997 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, South Building, P.O. Box 96456, Washington, DC 20090-6456; Fax: (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: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2043; Fax: (503) 326-7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-8139; Fax: (202) 720-5698. 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 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the "order." This 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."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1996-97 marketing year, which ends on May 31, 1997. 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 date of the entry of the ruling.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1996-97 marketing year, which ends on May 31, 1997. This rule increases the salable quantity from 1,074,902 pounds to 1,213,692 pounds and the allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996-97 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1996-97 marketing year were recommended by the Committee at its September 26, 1995, meeting. The Committee recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 24, 1996, issue of the Federal Register (61