

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV99-932-3 FR]

#### Olives Grown in California; Revisions to Handling Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the handling requirements under the California olive 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 establishes exemption, safeguard, and reporting requirements for handlers desiring to ship a small portion of their olives as new packaged olive products for test marketing and market development projects. This rule will help provide uniform procedures under the order and improve overall program administration.

**EFFECTIVE DATE:** This final rule becomes effective February 1, 2000.

**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, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule 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 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 final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the handling requirements under the order for olives grown in California. The revision implements 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.

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. Handlers will 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 regulatory exemptions for 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 revises § 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 olive products for test marketing and market development. The revision clarifies existing practices in the regulations, and establishes uniform procedures for all handlers to ensure that the handling of new product packaged olives exempted under the provisions of § 932.55 will be handled only as authorized. Such new products could include packaged olives of different styles containing various ingredients or flavorings, such as pieces of garlic, or jalapeno peppers.

The rule specifies information requested on a new form, the COC 155. Prior to engaging in test marketing and initiating market development projects

for a new product, a handler will be required to file the COC 155 with the committee. The form includes: (1) The name and address of 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 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.; (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.

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, or 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 be made in compliance with all other order requirements, they will remain applicable. This rule will allow 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 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 packaged 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 will 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.

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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 2 handlers subject to regulation under the order and approximately 1,200 producers of olives in the regulated area. In the initial regulatory flexibility analysis, we estimated that there were three handlers

subject to regulation under the order. Since publication of the proposed rule, more current information indicates that there are two handlers subject to regulation. 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. Neither 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 1999–2000 crop year (August 1 through July 31) indicates that total grower revenue for the 1999 crop will approximate \$39,500,000, and the average grower revenue will be approximately \$33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This final rule revises § 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 also reformats § 932.155 for the 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 will ensure that uniform guidelines and procedures are followed by handlers desiring to test market and initiate market development projects. Such activities could ultimately result in increasing sales of processed olives.

Under this rule, the committee will review written requests from handlers interested in test marketing and market development of new product lines. Such requests will be made on a new form, the COC 155, which requires 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.

The change in handling regulations will provide increased flexibility to handlers to respond to shifting trends in the marketplace.

The reporting and recordkeeping burden has changed from the burden in the proposed rule because the number of handlers subject to regulation under the order has dropped from three to two. Accordingly, this action imposes an additional reporting or recordkeeping requirement on two olive handlers by requiring them to complete COC Form 155 prior to the test marketing of a new canned olive product. The new form will be filed annually and will take about 20 minutes to complete.

Therefore, the additional burden created by the use of this form by the two handlers is estimated to be 40 minutes. However, the committee believes that the burden of such a requirement will be outweighed by the opportunities for handlers to test market new products.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0142 for documents required under the olive marketing order. As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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 two handler entities is presently represented on the committee.

A proposed rule concerning this action was published in the **Federal Register** on October 26, 1999 (64 FR 57597). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the order. Copies of the proposal were provided to the two affected handlers on October 26, 1999. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period, ending December 27, 1999, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit vegetable, and specialty crop marketing agreements and orders may be viewed at the following website:

<http://www.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation 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 shipments of olives occur all year-round, and, therefore, the safeguard procedures on test marketing new products should be in effect as soon as possible. Handlers are aware of this action which was unanimously recommended by the committee at a public meeting. Finally, a 60-day comment period was provided to allow interested persons to respond to this proposal, and no comments were received.

#### 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 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 the 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: January 24, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-2039 Filed 1-28-00; 8:45 am]

**BILLING CODE 3410-22-**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD01-00-002]

#### **Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Greenpoint Avenue Bridge, mile 1.3, across the Newtown Creek in New York City. This deviation allows the bridge owner to keep the bridge in the closed position from 6 a.m. to 6:30 p.m., on January 23, 2000, and

January 30, 2000. This action is necessary to facilitate necessary repairs to the bridge lift motors.

**DATES:** This deviation is effective on January 23, 2000, and January 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668-7195.

**SUPPLEMENTARY INFORMATION:** The Greenpoint Avenue Bridge, mile 1.3, across the Newtown Creek, has a vertical clearance of 26 feet at mean high water, and 31 feet at mean low water in the closed position. The existing operating regulations in 33 CFR 117.801(a)(4) require the bridge to open on signal at all times.

The bridge owner, the New York City Department of Transportation, notified the Coast Guard on December 10, 1999, that the bridge lift motors may fail to operate if immediate repairs were not implemented. The approval to proceed with the repairs was delayed because of the potential New York City Transit strike which was expected to occur on December 15, 1999. The New York City Transit work stoppage was avoided and as a result, the bridge owner has again requested a two-day closure to repair the bridge lift motors. The repairs are scheduled to be performed on two consecutive Sundays in late January. This decision was made because most of the commercial operators that use this waterway usually do not operate on Sundays resulting in few requests to open the bridge during that time period.

This deviation to the operating regulations allows the bridge owner to keep the Greenpoint Avenue Bridge in the closed position from 6 a.m. to 6:30 p.m., on January 23, 2000, and January 30, 2000.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 19, 2000.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 00-2023 Filed 1-28-00; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 167

[FRL-6530-5]

#### **Change of Address for Submission of Certain Reports; Technical Amendment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document announces a technical amendment revising the address foreign pesticide producing establishments are to use to obtain and submit forms to the Agency.

**DATES:** This document is effective January 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Foreign pesticide producing establishments should contact: FIFRA Foreign Establishment Registration Contact, Agriculture and Ecosystems Division (2225A), Office of Compliance, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, (202) 564-5008; Fax: (202) 564-0085.

**SUPPLEMENTARY INFORMATION:** Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that pesticides subject to the Act be produced only in establishments registered with the EPA, and requires that registered establishments file annual reports with the Agency. The Agency has established regulations at 40 CFR part 167 to implement the requirement of section 7 of FIFRA. Section 167.90 of these regulations directs that applications for registration of establishments and annual reports be sent to the appropriate EPA regional office (if a registered establishment is located in the United States) or to a specified address at EPA headquarters (if a registered establishment is located in any other country). The Agency is, by this document, amending 40 CFR 167.90(b) by revising the address to be used by foreign establishments when submitting applications or annual reports to the Agency. This technical amendment to the regulations will become effective upon publication of this document in the **Federal Register**.

#### **List of Subjects in Part 167**

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.