

area and 50 walnut handlers subject to regulation under the marketing order. Small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000 and small agricultural producers have been defined by the Small Business Administration as those having annual receipts less than \$750,000 (13 CFR 121.201).

Industry information from the Walnut Marketing Board indicates that 36 of the 50 walnut handlers, or 72%, shipped less than \$6,000,000 worth of walnuts and could be considered small businesses by the Small Business Administration. In addition, only an estimated 60 producers, or 1.2%, have annual receipts in excess of \$750,000. Based on the foregoing, the majority of walnut producers and handlers regulated under the marketing order may be classified as small entities.

This rule suspends provisions of the walnut marketing order (order) pertaining to eligibility of members to serve on the Walnut Marketing Board (Board). The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. Specifically, this action suspends § 984.38 of the order entitled "Eligibility".

Due to structural changes in the industry, the order provisions regarding Board composition no longer accurately reflect the industry composition. If the eligibility requirements are not suspended, four of the Board members that represented the cooperative become ineligible to serve on the Board. However, these members continue to represent a significant portion of the industry. Suspending the order provision regarding eligibility of Board members allows a complete Board to remain in place. This action will enable a Board that still represents the walnut industry to continue to administer the order without disruption while the order is being amended to reflect changes in the industry structure. The Board unanimously recommended suspending order language by mail balloting in early July, 2005.

Alternatives to this action were considered. One alternative was to remove the former cooperative members from the Board, which would result in a 6-member Board. This was not considered a preferred option because it would limit the size of the Board.

This rule suspends order language pertaining to membership eligibility on the Walnut Marketing Board. Accordingly, this action does not impose any additional reporting or recordkeeping requirements, or any

other costs, on either small or large walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.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.

This rule invites comments on suspending order provisions regarding eligibility of Board members under the California walnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that the order language being suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Board unanimously recommended these changes; (2) these changes are needed to allow a representative Board to remain in place to administer the order; and (3) this rule provides a 60-day comment period and any comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

#### **PART 984—WALNUTS GROWN IN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In part 984, § 984.38 is suspended indefinitely.

Dated: August 23, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 993 and 999**

[Docket No. FV05–993–2 FIR]

#### **Dried Prunes Produced in California; Suspension of Handling and Reporting Requirements, Extension of the Suspension of Outgoing Inspection and Volume Control Regulations, and Extension of the Suspension of the Prune Import Regulation**

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

**ACTION:** Final rule; affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending indefinitely all remaining handling and most reporting requirements under Marketing Order No. 993. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (committee). The interim final rule being adopted by this action also indefinitely extends the suspensions of the outgoing inspection and prune import regulations and volume control regulations, currently temporarily suspended until August 1, 2006, and August 1, 2008, respectively. The interim final rule was effective August 1, 2005.

**DATES:** Effective September 26, 2005.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (559) 487–5901, Fax: (559) 487–5906; or Kathy Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

**SUMMARY:** This rule adopts the suspension of the handling and reporting requirements under the marketing order and the prune import regulation, beginning with the 2005-2006 crop year, and continuing indefinitely. The provisions could either be reactivated or terminated. The 2005-2006 crop year begins on August 1, 2005. This action also adopts the extension of the current temporary suspensions of the outgoing inspection and the volume control regulations. This rule was unanimously recommended by the committee at a meeting on March 15, 2005.

### Marketing Order Authority for Suspension

Section 993.90(a) of the prune marketing order provides, in part, that the Secretary "shall terminate or suspend the operations of any or all of the provisions of the subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the "Act." Information from the committee, or other sources, may be used by the Secretary in making the determination.

Being cognizant that some growers and packers believe the marketing order has become overly complex and restrictive in today's more technologically-advanced, global market, the committee has held task force meetings over the last two years to solicit input from the industry on amending the order. However, little progress has resulted from those meetings concerning the best method to streamline the existing order and update it to reflect modern packing methods and marketing strategies. Thus, at its meeting on March 15, 2005, the committee voted unanimously to recommend to USDA that the handling and reporting requirements, including the currently-suspended outgoing inspection and volume-control regulations, be suspended indefinitely.

Because the committee would need to obtain information on the tonnage received by each handler to properly allocate committee member and alternate positions, and to assess handlers for their prorated share of expenses, the committee has arranged with the California Department of Food and Agriculture and the California Dried Plum Board (CDPB) to receive such information as needed from CDPB for this purpose.

On April 16, 2004, the committee approved a motion to submit a request to USDA no later than January 15, 2005, to suspend the marketing order for one year, effective August 1, 2005, through July 31, 2006. At that time, the committee believed that the lead time provided by this recommended suspension permits the industry to consider what portions of the suspended Federal marketing order should be added to the California State marketing order for dried plums.

In accordance with the committee's April 16, 2004, resolution, on December 8, 2004, it recommended to USDA that the marketing order be suspended for one crop year, beginning August 1, 2005, and requested that the current committee members to be appointed as trustees during the suspension period.

On February 23, 2005, the Executive Committee reconsidered their recommendation to suspend the entire order and have the current members named as trustees. The Executive Committee made a subsequent recommendation to committee to rescind the December 8, 2004, recommendation. The Executive Committee then recommended the handling and reporting requirements be suspended indefinitely, and forwarded that revised recommendation to the full committee, as well. The revised recommendation also included extending the temporary suspensions of outgoing inspection and volume control regulations, which would have ended on August 1 of 2006 and 2008, respectively. As stated earlier, on March 15, 2005, the committee revised its recommendation accordingly.

### Prune Import Regulations

Section 8e of the Act provides that when certain domestically-produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule indefinitely suspends the handling regulations, including grade, size, and quality requirements, these requirements will continue to be suspended in the import regulations. Currently, the prune import regulations are suspended through July 31, 2006.

U.S. imports of dried prunes are insignificant compared to U.S. production. In 2002, while the U.S. produced 158,000 tons of dried prunes, only 616 tons were imported. In that year, the domestically-produced tonnage was over 250 times larger than the imported tonnage.

In recent years, as volumes of domestically-produced prunes have fluctuated imports have also fluctuated, but imported prunes continue to represent a very small portion of the available prune products in the U.S. market.

Argentina, Chile, France, Mexico, Iran, and Turkey export prunes to the United States, with Argentina accounting for approximately 90 percent of all U.S. imports.

### Handling Requirements

Under the order, §§ 993.48 through 993.59, and §§ 993.62 authorized requirements upon handlers to meet grade and size requirements, obtain both incoming and outgoing inspection, label prunes appropriately, and hold a portion of the crop in reserve. The order's rules and regulations establish similar requirements.

Currently the provisions for outgoing inspections and reserve disposition are suspended in both the order and the order's rules and regulations until August 1, 2006, and August 1, 2008, respectively. This rule suspends indefinitely all the remaining handling requirements.

#### Reporting Requirements

Under §§ 993.71 through 993.75, the order also includes authority to require that handlers file reports with the committee on acquisitions, accountings, holdings, uses, sales, and shipments of prunes. The order's rules and regulations include similar requirements, except that some of these provisions are currently suspended, as they relate to volume control requirements.

This action suspends indefinitely those requirements, along with other handling requirements and the reporting requirements.

As stated previously, the committee would enter into an agreement with the CDPB to collect information necessary for allocating committee member and alternate member positions and for continuing assessments on a limited basis.

#### A Listing of Marketing Order Provisions To Be Suspended

As noted, handling and reporting requirements will be suspended indefinitely. Included are provisions in the order regarding outgoing inspection and volume control regulations, which are currently temporarily suspended until August 1, 2006, and August 1, 2008, respectively.

In a conforming action, the provisions related to marketing policy are suspended, as well. Under the order the committee is required to establish a marketing policy annually if handling requirements are recommended. If no handling regulations are recommended due to suspension, no marketing policy statement is required.

Certain provisions and parts of certain provisions are currently suspended until a specified time. This rule will indefinitely suspend those provisions or parts of certain provisions, as well as additional provisions. The following list of provisions or parts of provisions being suspended are listed below chronologically and notations are made to clarify which provisions or parts of provisions are currently suspended.

*Section 993.21d* Reserve prunes (currently suspended through 2008)

*Section 993.33* Voting procedure (partially suspended through 2008)

*Section 993.36(i)* Duties (currently suspended through 2008)

*Section 993.41* Marketing policy

*Section 993.48* Regulation

*Section 993.49* Incoming regulation

*Section 993.50* Outgoing regulation (partially suspended through 2006)

*Section 993.51* Inspection and certification (partially suspended through 2006)

*Section 993.52* Modification

*Section 993.53* Above parity situations

*Section 993.54* Establishment of salable and reserve percentages (currently suspended through 2008)

*Section 993.55* Application of salable and reserve percentages after end of crop year (currently suspended through 2008)

*Section 993.56* Reserve obligation (currently suspended through 2008)

*Section 993.57* Holding requirement and delivery (currently suspended through 2008)

*Section 993.58* Deferment of time for withholding (currently suspended through 2008)

*Section 993.59* Payment to handlers for services (currently suspended through 2008)

*Section 993.62* Diversion privileges (currently suspended through 2008)

*Section 993.65* Disposition of reserve prunes (currently suspended through 2008)

*Section 993.72* Reports of acquisitions, sales, uses, and shipments

*Section 993.73* Other reports

*Section 993.74* Records

*Section 993.75* Verification of reports

*Section 993.97* Exhibit A; minimum standards (partially suspended through 2006)

*Section 993.104* Lot

*Section 993.105* Size count

*Section 993.106* In-line inspection

*Section 993.107* Floor inspection

*Section 993.108* Non-human

consumption outlet

*Section 993.149* Receiving of prunes by handlers

*Section 993.150* Disposition of prunes by handlers (partially suspended through 2006)

*Section 993.156* Application of reserve percentage (currently suspended through 2008)

*Section 993.157* Holding and delivery of reserve prunes (currently suspended through 2008)

*Section 993.158* Deferment of reserve withholding (currently suspended through 2008)

*Section 993.159* Payments for services performed with respect to reserve tonnage prunes (currently suspended through 2008)

*Section 993.162* Voluntary prune plum diversion (currently suspended through 2008)

*Section 993.165* Disposition of reserve prunes (currently suspended through 2008)

*Section 993.172* Reports of holdings, receipts, uses, and shipments (partially suspended through 2008)

*Section 993.173* Reports of accounting (partially suspended through 2008)

*Section 993.174* Records

*Section 993.400* Modifications

*Section 993.409* Undersized prune regulation for the 2002–03 crop year

*Section 993.501* Consumer package of prunes

*Section 993.503* Size category

*Section 993.504* In-line inspection

*Section 993.505* Floor inspection

*Section 993.506* Lot

*Section 993.515* Size categories (currently suspended through 2006)

*Section 993.516* Tolerance and

limitations (currently suspended

through 2006)

*Section 993.517* Identification

(currently suspended through 2006)

*Section 993.518* Compliance

(currently suspended through 2006)

*Section 993.601* More restrictive

grade regulation (partially suspended

through 2006)

*Section 993.602* Maximum

tolerances

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000.

An industry profile shows that 8 out of 21 handlers (38 percent) shipped over \$6,000,000 worth of dried prunes in

2003 and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped under \$6,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,100 total producers, would be considered large growers with annual incomes over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

In addition, there are an estimated 30 importers, and one third-party entity that performs inspections under the order. USDA does not have precise information on these entities, but believes that the majority of the importers and the third-party inspection agency are small entities.

As recommended by the Committee, this rule indefinitely suspends handling and reporting requirements under the marketing order, including extending the temporary suspensions of outgoing inspection requirements and reporting regulations and the import regulations.

#### Impact of the Regulation

This action reduces the reporting and recordkeeping requirements for California prune handlers and importers; and reduces the committee's, prune handlers', and prune importers' associated administrative costs. This action also reduces the number of inspections performed by the inspection agency for both handlers and importers.

The benefits of this final rule are expected to accrue to all prune handlers and importers regardless of their size.

#### Alternatives Considered

The deliberations about suspension of the marketing order for one year began at meetings held on April 3 and May 1, 2003, and continued to the present. In April 2004, the committee believed that such a suspension provides the industry with an opportunity to operate without regulation. For some members, a suspension was preferable to termination.

At the December 8, 2004, meeting, the committee discussed the impact of and alternatives to suspending the entire marketing order, and at the February 23, 2005, Executive Committee meeting, the members and industry representatives discussed the impact of and alternatives to suspending handling and reporting requirements, including extending the current suspensions of outgoing inspection requirements and reporting regulations.

At the March 15, 2005, committee meeting, the members received the recommendations of the Executive

Committee and, being in unanimous accord, voted to rescind their previous recommendation to suspend the entire order in favor of recommending that the handling and reporting requirements be suspended indefinitely, including the currently-suspended outgoing inspection and volume control regulations.

The suspension permits the industry to operate for an indefinite period of time without most order requirements. This will allow growers and handlers time to consider which provisions in the marketing order might continue to meet their future needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. On the contrary, this action will remove reporting requirements on all prune handlers indefinitely. 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.

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

In addition, the committee's meetings were widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues at any meeting in the last two years, including task force meetings. Like all committee meetings, the April 16 and December 8, 2004, meetings; and the February 23 and March 15, 2005, meetings were public meetings; and all entities, both large and small, were encouraged to express views on this issue. The committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the committee, its Executive Committee, and the marketing order task force, provide broad industry representation. Thus, this rule reflects their considerable deliberations and determinations. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small business.

Further, the Committee's meeting was widely publicized throughout the Prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 15, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 27, 2005. Copies of the rule were mailed by the Committee staff to all Committee members and Prune handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 26, 2005. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.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.

The U.S. Trade Representative has reviewed this final rule and concurs with its issuance.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 30610, May 27, 2005) will tend to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

##### 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Plums, Prunes, Raisins, Reporting and recording keeping requirements, Walnuts.

■ Accordingly, the interim final rule amending 7 CFR Part 993 and 999 which was published at 70 FR 30610 on May 27, 2005, is adopted as a final rule without change.

Dated: August 22, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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