

and future costs of supervising the performance of official agencies. A second response did not respond to the proposed action. Consequently, GIPSA is implementing the fee changes as they were proposed.

Executive Orders 12866 and 12988

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the OMB. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Sec. 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this rule has been approved by the OMB under control number 0580-0013.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Regulatory Flexibility Act Certification

GIPSA has determined that this rule does not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the majority of applicants (grain industry) that apply for these official services, and are subjected to GIPSA supervision fees, do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 18 export elevators in the United States that could receive services from delegated States or designated agencies. Official services are available from 7 delegated States and 49 designated agencies. For

clarification, any and all grain that is exported from the U.S. export port locations must, as required by the USGSA, be inspected and/or weighed. These services are either performed by GIPSA or delegated States. Further, some grain exported from interior locations may also require inspection and/or weighing services unless the services are waived as provided in section 800.18 of the regulations. These services are provided by designated agencies. The USGSA does not require inspection or weighing services for grain marketed within the U.S. Consequently, these services are permissive and may be performed by official agencies. The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide supervision of official grain inspection and weighing services, and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs.

GIPSA realizes that any increase in supervision fees will be charged by official agencies to the users (grain industry) of the official grain inspection and weighing system.

Although, the overall effect of this rule will be passed on to the users of official grain inspection and weighing services, mostly large corporations, David R. Shipman, Acting Administrator, GIPSA, has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

■ 2. In § 800.71, paragraph(a), Schedule C is amended by removing Tables 1 and 2 and adding introductory text in their place to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR

DESIGNATED AGENCIES IN THE UNITED STATES.

The supervision fee is charged at \$0.011 per metric ton inspected and/or weighed.

* * * * *

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05-16952 Filed 8-25-05; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV05-984-1 IFR]

Walnuts Grown in California; Suspension of Provision Regarding Eligibility of Walnut Marketing Board Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends a provision 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. This action is an interim measure to address a change in industry structure affecting cooperative marketing association related positions. This will allow the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July, 2005.

DATES: Effective August 29, 2005; comments received by October 25, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposal to: Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail: moab.docketclerk@usda.gov, or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during

regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Martin Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; Telephone: (559) 487-5901, Fax: (559) 487-5906; or Kathleen M. 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, or 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.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), hereinafter referred to as the "order", regulating the handling of walnuts grown in the State of California. The marketing agreement and order are effective pursuant to 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed 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.

This rule suspends a provision 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. This action is an interim measure to address a change in industry structure affecting cooperative marketing association related positions. This will allow the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July, 2005.

Section 984.35 of the order establishes the Board as the administrative body appointed by USDA to administer the order. That section also specifies composition of the Board, and allocates seats to cooperative and independent growers and handlers. The Board is comprised of ten members and ten alternate members. Two members represent handlers that are cooperative marketing associations of growers (cooperative handlers), and two members represent growers who market their walnuts through cooperative handlers. Two members represent handlers that are not cooperative marketing associations of growers (independent handlers), and two members represent growers that market their walnuts through independent handlers. One member represents growers that market their walnuts through either cooperative or independent handlers, whichever category handled over fifty percent of the walnuts handled by all handlers in the industry in the immediately preceding two marketing years. In recent years, this Board position has been allocated to the independent category. One member represents neither growers nor handlers (public member).

Section 984.38 of the order provides, in part, that no person shall be selected or continue to serve as a member or alternate member of the Board unless that person is engaged in the business of the group he or she was nominated to represent.

A change recently occurred in the walnut industry that impacts composition of the Board. A large cooperative marketing association

recently converted to a publicly held corporation. The former cooperative association held two grower and two handler positions on the Board.

In order to address this change, section 984.38 of the order needs to be suspended to allow a representative Board to continue in place while the order is amended to reflect the new industry structure. Therefore, the Board recommended through a mail ballot vote in early July, 2005, to suspend the order provision. USDA has reviewed the recommendation and has determined that suspending § 984.38 of the order regarding eligibility requirements of Board members will accomplish that objective. As previously discussed, § 984.38 provides that no person shall be selected or continue to serve as a member or alternate member of the Board unless that person is engaged in the business of the group he or she was nominated to represent.

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 is representative of the walnut industry to continue to administer the order without disruption while the order is being amended to reflect changes in the industry structure.

This action suspends § 984.38 of the order entitled "Eligibility". This action is in the best interest of handlers and growers in the California walnut industry as the industry transitions through a structural change.

Initial Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 5,000 producers of walnuts in the production

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.

[FR Doc. 05–17055 Filed 8–23–05; 4:46 pm]

BILLING CODE 3410–02–P

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