

participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California date 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 material 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.

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 2008–09 crop year begins on October 1, 2008, and the marketing order requires that the rate of assessment for each crop year applies to all assessable dates handled during such crop year; (2) the action decreases the assessment rate for assessable dates beginning with the 2008–09 crop year; (3) handlers are aware of this action which was unanimously recommended

by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

#### **PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA**

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

#### **§ 987.339 Assessment rate.**

On and after October 1, 2008, an assessment rate of \$0.60 per hundredweight is established for California dates.

Dated: August 20, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–19697 Filed 8–25–08; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 993**

[Docket No. AMS–FV–08–0060; FV08–993–1 IFR]

#### **Dried Prunes Produced in California; Decreased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes. The Committee locally administers the marketing order that regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year began

August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective August 27, 2008. Comments received by October 27, 2008, 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 to the 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; or *Internet:* <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Maureen Pello, Assistant Regional Manager, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (559) 487–5901, *Fax:* (559) 487–5906; or E-mail: [Maureen.Pello@usda.gov](mailto:Maureen.Pello@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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 No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is

intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2008, and continue until amended, suspended, or terminated. 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. Such 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 decreases the assessment rate established for the Committee for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes handled.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2008, and unanimously recommended an assessment rate of \$0.30 per ton of salable dried prunes and expenditures totaling \$51,587 for the 2008–09 crop

year. In comparison, last year's approved expenses were \$102,523. The assessment rate of \$0.30 per ton of salable dried prunes is one-half of the rate currently in effect.

The Committee recommended a lower assessment rate because the 2008–09 crop is estimated at 120,000 tons, which is over 35,000 tons larger than the 2007–08 crop. Income generated from the lower assessment rate combined with excess assessment income carried into the new crop year should be adequate to cover the Committee's 2008–09 expenses.

The Committee's budget of expenses of \$51,587 includes a decrease in personnel expenses, and a slight decrease in operating expenses. Combined salaries and expenses are almost 50 percent lower than last year, or about \$26,248. The Committee also included \$12,446 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the California Dried Plum Board (CDPB). Based on the Committee's reduced activities in recent years, it is funding only 5 percent of the shared expenses of the two programs. This level was reduced from last year's level of 10 percent to reflect a more accurate figure. The Committee believes that extra assessment income carried in from the 2007 crop year, plus interest income and 2008 assessment income, is adequate to cover its estimated expenses of \$51,587.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$12,446 for contingencies. For the 2007–08 crop year, the Committee's budgeted expenses were \$50,505 for salaries and benefits, \$15,075 for operating expenses, and \$36,943 for contingencies.

The assessment rate recommended by the Committee was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2008–09 crop year, and estimated income from other sources such as interest. Dried prune production for the year is estimated to be 120,000 salable tons, which should provide \$36,000 in assessment income at \$0.30 per ton of salable dried prunes. Income derived from handler assessments, plus excess funds from the 2007–08 crop year should be adequate to cover budgeted expenses.

The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2007–08 crop

year (currently estimated at \$15,487) for up to 5 months beyond the end of the crop year to meet 2008–09 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

The assessment rate established in this rule is effective indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committees' 2008–09 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

#### **Initial 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 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those whose annual receipts are less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

Committee data indicates that about 64 percent of the handlers ship under \$6,500,000 worth of dried prunes.

Dividing the average prune crop value for 2007–08 reported by the National Agricultural Statistics Service (NASS) of \$111,650,000 by the number of producers (800) yields an average annual producer revenue estimate of about \$139,562. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes.

The Committee met on June 26, 2008, and unanimously recommended estimated expenses for 2008–09 of \$51,587 and a decreased assessment rate of \$0.30 per ton of salable dried prunes. The Committee's recommended budget was based on a decrease in personnel expenses and a decrease in operating expenses. Combined salaries and expenses are almost 50 percent lower than last year, or about \$26,248. The Committee also included \$12,446 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the CDPB. Based on the Committee's reduced activities in recent years, it is funding only 5 percent of the shared expenses of the two programs. This level was reduced from last year's level of 10 percent to reflect a more accurate figure. The Committee believes that extra assessment income carried in from the 2007 crop year, plus interest income and 2008 assessment income, is adequate to cover its estimated expenses of \$51,587.

The assessment rate of \$0.30 per ton of salable dried prunes is one-half of the rate currently in effect. The quantity of salable dried prunes for the 2008–09 crop year is currently estimated at 120,000 tons, compared to 95,000 tons of salable dried prunes for the 2007–08 crop year.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$12,446 for contingencies. Budgeted expenses for these items in 2007–08 were \$50,505 for salaries and benefits, \$15,075 for operating expenses, and \$36,943 for contingencies.

The 2008–09 assessment rate was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2008–09 crop year, and estimated income from other sources such as interest. Therefore, the Committee

recommended an assessment rate of \$0.30 per ton of salable dried prunes.

Prior to arriving at its budget of \$51,587, the Committee considered information from various sources, including the Committee's Executive Subcommittee. The Executive Subcommittee reviewed the administrative expenses shared between the Committee and the CDPB in recent years. Accordingly, the Executive Subcommittee recommended reducing the share of expenses allocated to the Committee from 10 to 5 percent. The Executive Subcommittee then recommended the \$51,587 budget and \$0.30 per ton assessment rate to the Committee. The Committee recommended the same budget and assessment rate to USDA.

Section 993.81(c) of the order provides the Committee the authority to use excess assessment funds from the 2007–08 crop year (estimated at \$15,487) for up to 5 months beyond the end of the crop year to meet 2008–09 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

To calculate the percentage of grower revenue represented by the assessment rate for 2007, the assessment rate of \$0.60 per ton is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2007–08 crop year as a percentage of grower revenue of .05 percent (\$0.60 divided by \$1,450 per ton). NASS data for 2008 is not yet available. However, applying the same calculations above using the average grower price for 2005–07 would result in estimated assessment revenue as a percentage of total grower revenue of .02 percent for the 2008–09 crop year (\$0.30 divided by \$1,437 per ton). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2008.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 26, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule,

including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 material 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.

Pursuant to 5 U.S.C. 553, it 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 the 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 2008–09 crop year began on August 1, 2008, and the marketing order requires that the rate of assessment for each year apply to all assessable prunes handled during the year; (2) this action decreases the assessment rate for assessable prunes beginning with the 2008–09 crop year; (3) handlers are aware of this action which was unanimously recommended at a public meeting and is similar to actions recommended by the Committee in past years, and (4) this interim final rule provides for a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 993**

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

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

**PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

**§ 993.347 Assessment rate.**

On and after August 1, 2008, an assessment rate of \$0.30 per ton of salable dried prunes is established for California dried prunes.

Dated: August 20, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–19695 Filed 8–25–08; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF STATE****22 CFR Part 40**

[Public Notice: 6328]

RIN 1400–AC04

**Aliens Inadmissible Under the Immigration and Nationality Act, as Amended: Unlawful Voters**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final the Department interim rule which amended the regulations concerning visa ineligibility for aliens who vote unlawfully. The amendment was necessary to comply with the provisions of the Child Citizenship Act of 2000.

**DATES:** This rule is effective August 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Penafrancia D. Salas, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–2878.

**SUPPLEMENTARY INFORMATION:****What is the Authority and Exception for this rule?**

On June 21, 2005, the Department published an interim rule [70 FR 35526] that implemented Section 201(b)(1) of Public Law 106–395, Child Citizenship Act of 2000 [February 27, 2001]. This

Act amended Section 212(a)(10) of the Immigration and Nationality Act (INA) by adding an exception to the ground of inadmissibility, INA 212(a)(10)(D), for aliens who voted in violation of the U.S. law. Under INA 212(a)(10)(D), in general, an alien will continue to be inadmissible, and therefore, ineligible for a visa, if the alien has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation. Nevertheless, pursuant to the new exception, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen.

**Were comments solicited in the Departments Interim rule?**

Yes, the Department solicited comments; however, no comments were received.

The final rule is unchanged from the interim rule which amended the Departments regulations at 22 CFR 40.104, published in the **Federal Register** on June 21, 2005 (70 FR 35526–35527). The interim rule is hereby adopted as final.

Dated: August 14, 2008.

**Janice L. Jacobs,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. E8–19755 Filed 8–25–08; 8:45 am]

**BILLING CODE 4710–06–P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 630**

[FHWA Docket No. FHWA–2007–0020]

RIN 2125–AF23

**Advance Construction of Federal-Aid Projects**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is revising its regulation for advance construction of Federal-aid projects by: (a) Removing the restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for

Federal-aid highways and highway safety construction, prior to the approval of advance construction projects; and (b) clarifying that advance construction procedures may be used for all categories of Federal-aid highway funds, and that any available Federal-aid funds for which a project is eligible may be used when a project is converted to a Federal-aid project. These revisions make the regulation consistent with the advance construction statute, which was amended by a provision enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

**DATES:** *Effective Date:* September 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Gray, Federal-aid Financial Management Division, (202) 366–0978, or Mr. Steven Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

An electronic copy of the NPRM, the comments received and a copy of this document may be viewed at [www.regulations.gov](http://www.regulations.gov). A copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

**Background**

Section 115 of title 23, United States Code, permits the Secretary to authorize States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves a project. The State may proceed with an advance construction project using State funds as no present or future Federal funds are actually committed to the project. At any time the State may request that the project be converted to a Federal-aid project provided that sufficient Federal-aid funds and obligation authority are available. A State also may request a partial conversion where only a portion of the Federal share of project costs is obligated and reimbursed; and the remainder may be converted at a later time provided that funds and associated obligation authority are available. Only the amount converted to a Federal-aid project becomes an obligation of the Federal Government.