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A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ama.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 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 2007–2008 fiscal period began on April 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington-Oregon fresh prunes handled during such fiscal period; (2) this action decreases the assessment rate for assessable prunes beginning with the 2007–2008 fiscal period; (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 924

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

■ For the reasons set forth in the preamble, 7 CFR part 924 is amended as follows:

#### **PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON**

■ 1. The authority citation for 7 CFR part 924 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 924.236 is revised to read as follows:

#### **§ 924.236 Assessment rate.**

On or after April 1, 2007, an assessment rate of \$1.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–13583 Filed 7–12–07; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 928**

**Docket No. AMS–FV–07–0024; FV02–928–3 FRJ**

#### **Papayas Grown in Hawaii; Termination of Marketing Order 928 and Implementing Rules and Regulations**

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

**ACTION:** Final rule, termination order.

**SUMMARY:** This final rule terminates the Federal marketing order (order) for papayas grown in Hawaii, and the rules and regulations established under the order. The Department of Agriculture (USDA) previously determined the order should be terminated due to the results of a referendum in which growers indicated a lack of support for the continuation of the order. However, USDA postponed the termination until licensing agreements regarding development and use of transgenic papaya varieties could be resolved. Sufficient time has elapsed for the industry to resolve any outstanding licensing issues. Therefore, USDA is proceeding with the termination of the order.

**DATES:** Effective Date: July 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marc McFetridge, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–1509, Fax (202) 720–8938; or [Marc.McFetridge@usda.gov](mailto:Marc.McFetridge@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 action is being taken pursuant to § 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” and § 928.64 of the order.

USDA 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 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.

This rule terminates the marketing order for papayas grown in Hawaii and the rules and regulations issued thereunder. The order provides the authority to regulate the handling of papayas grown in Hawaii and was administered locally by the Papaya Administrative Committee (PAC).

The order has been in effect since 1971. The order authorizes the establishment of grade, size, quality, pack, and container requirements. The order also authorizes production and marketing research, market development, and paid advertising for Hawaii papayas. The program was funded by assessments imposed on papaya handlers.

Section 928.64(e) of the order specifies that continuance referenda must be conducted among papaya producers every sixth year before October 1. In accordance with this section, USDA conducted a referendum among papaya growers during the

period from May 6 to May 31, 2002, to determine if they favored continuation of their program. The referendum order provided that USDA would consider terminating the provisions of the order if less than two-thirds of the number of growers voting and growers of less than two-thirds of the papaya volume represented in the referendum favored continuance.

Ballots were mailed to 462 known papaya growers in Hawaii. By the close of the voting period, 55 valid votes had been cast. The results show that 49 percent of the growers voting, who produced 21 percent of the volume represented in the referendum, favored continuance of the program. The order failed to pass both criteria for continuance, demonstrating a lack of producer support needed to carry out the objectives of the Act. Thus, USDA determined that the order should be terminated.

However, the papaya industry requested that USDA postpone the termination of the order until licensing issues concerning development and use of transgenic papaya varieties were resolved. It was important for the industry to continue to commercially grow and sell the transgenic papayas. The PAC was authorized to use the patented papayas varieties and wished to transfer this authority to another entity before dissolution of the PAC with the termination of the order. USDA agreed to postpone the termination allowing the PAC to remain in existence while the issues were resolved.

USDA has been in contact with the papaya industry periodically to monitor the papaya industry's progress in resolving the licensing issues. According to the president of the HPIA, the agreements were expected to be finalized within a few months. Sufficient time has elapsed for the industry to resolve any outstanding licensing issues. Therefore, USDA is proceeding with the termination of the order.

Pursuant to section 608c(16)(A) of the Act and § 928.64 of the order, it has been previously found that the order provisions should be terminated. Section 608c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress was so notified on July 12, 2002.

Effective August 1, 2002 (67 FR 50581), the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively, were suspended. This termination order removes these provisions and other rules and regulations established under the order.

Pursuant to § 928.65 of the order, the members of the Papaya Administrative Committee shall serve as trustees to conclude and liquidate the affairs of the committee.

### 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 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 those 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.

In 2005 there were 205 producers of papayas in the production area and approximately 60 handlers. Small agricultural producers are defined as those having annual receipts of less than \$750,000, and small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000.

Based on a reported average Philadelphia wholesale terminal market price in 2006 for fresh papayas of \$0.53 per pound, a handler would have to ship in excess of 12 million pounds to have annual receipts of \$6.5 million in 2006. Based on a reported average grower price in 2006 of \$0.391 per pound, and average annual industry shipments of approximately 28.7 million pounds in 2006, annual total grower revenues would be \$11.2 million. Average annual grower revenue would, therefore, be \$54,740 in 2006. Thus, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This final rule terminates the Hawaii papaya marketing order and the rules and regulations established under the order. The order is being terminated because in a referendum held in 2002, papaya producers failed to support continuation of the program. The papaya industry requested postponing the termination of the order until licensing issues were resolved regarding development and use of transgenic papaya varieties. Sufficient time has elapsed for the industry to resolve any outstanding licensing issues. Therefore

USDA is proceeding with the termination of the order.

This action eliminates program requirements that were imposed on papaya handlers through July 31, 2002. Until that time, handlers were required to pay an assessment rate of \$0.008 per pound handled. Additionally, handlers were required to file monthly reports with the committee.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being terminated by this rule were previously approved by the Office of Management and Budget (OMB) under OMB No. 0581-0102, Papayas Grown in Hawaii. This information collection was terminated by OMB on August 19, 2002.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final 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/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 matter presented, including the results of a producer referendum held in 2002, it is hereby found that the papaya marketing order and the rules and regulations in effect under the order do not tend to effectuate the declared policy of the Act and, therefore, are terminated.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and 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: (1) This action relieves restrictions on handlers by terminating the requirements of the papaya marketing order; (2) regulations under the order have been suspended for the past five crop years; and (3) no useful purpose would be served by delaying the effective date.

### List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

### PART 928—[REMOVED]

■ For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674, 7 CFR part 928 is removed.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-13580 Filed 7-12-07; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1214

[Doc. No. AMS-FV-07-0052; FV-06-707-C]

#### Kiwifruit Research, Promotion, and Consumer Information Order; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** The Agricultural Marketing Service (AMS) is removing from the Code of Federal Regulations (CFR) its procedural regulations regarding the Kiwifruit Research, Promotion, and Consumer Information Order (Order), a program never implemented.

**EFFECTIVE DATE:** July 14, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Marlene M. Betts, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0634-S, Washington, DC 20250-0244, telephone (202) 720-9915, fax (202) 205-2800, or e-mail [Marlene.Betts@usda.gov](mailto:Marlene.Betts@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Agricultural Marketing Service (AMS) is removing from the Code of Federal Regulations (CFR), 7 CFR part 1214, Kiwifruit Research, Promotion, and Consumer Information Order (Order). The Order was authorized by the National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461-7473). The proposed Order was published in the **Federal Register** on October 17, 1997, [62 FR 54314] and then again on November 10, 1998, [63 FR 62964] but never finalized. Nevertheless, final referendum procedures were published in the **Federal Register** on October 17, 1997, [62 FR 54310] and added to the CFR in Subpart C, along with reserved parts, Subpart A and Subpart B at 7 CFR part 1214. This action is needed to remove 7 CFR part 1214 from the CFR since the program was never implemented. This document provides for the removal of 7 CFR 1214 in its entirety.

#### List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

#### PART 1214—[REMOVED]

■ Accordingly, under the authority of 7 U.S.C. 7461-7473, 7 CFR part 1214 is removed.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-13546 Filed 7-12-07; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 331 and 381

[Docket No. FSIS-2007-0023]

RIN 0583-AD29

#### Designation of the State of New Mexico Under the Federal Meat Inspection Act and Poultry Products Inspection Act

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final Rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing that it is designating the State of New Mexico as a State to receive Federal inspection with respect to operations and transactions involving meat and poultry products within the State because representatives of the State have requested such designation. In response to the State's request, FSIS will assume responsibility for the meat and poultry inspection programs in the State of New Mexico on August 13, 2007. Therefore, FSIS is amending the Federal meat and poultry products inspection regulations by adding New Mexico to the list of designated States.

**DATES:** This final rule will be effective on August 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ron Eckel, Chief Federal State Audit Branch, Internal Control Division, Office of Program Evaluation, Enforcement, and Review, Food Safety and Inspection Service, USDA, 1299 Farnam Street, Suite 300, Landmark Center Building, Omaha, Nebraska 68102; telephone 402-344-5000.

**SUPPLEMENTARY INFORMATION:** FSIS has been delegated the authority to exercise the functions of the Secretary of

Agriculture as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

Under these statutes, a State may administer meat and poultry inspection programs provided that it has developed and is effectively enforcing inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1-4, 6-10, and 12-22 of the PPIA. If States can no longer effectively enforce meat and poultry inspection requirements at least equal to the Federal requirements, they must be "designated" by the Secretary to receive Federal inspection (21 U.S.C. 661(c) & 454(c)).

The Governor of New Mexico sent a letter to the Secretary of the United States Department of Agriculture, dated June 22, 2007, requesting the designation of New Mexico for purposes of allowing FSIS to conduct food safety inspections of meat and poultry products within the State of New Mexico. Consequently, the Secretary of Agriculture is designating the State of New Mexico under 21 U.S.C. 661(c) of the FMIA and 21 U.S.C. 454(c) of the PPIA. On and after August 13, 2007, the provisions of titles I and IV of the FMIA and sections 1-4, 6-10, and 12-22 of the PPIA will apply to operations and transactions involving meat and poultry products within the State of New Mexico, unless exempt under 21 U.S.C. 623 or 661(c)(2) of the FMIA or 21 U.S.C. 454(c)(2) or 464 of the PPIA.

Owners or operators of New Mexico's meat and poultry establishments wishing to continue operations after August 13, 2007, must contact the FSIS District Office in Denver, CO, in order to receive Federal inspection. This office will provide information concerning requirements and exemptions under the FMIA and the PPIA, applications for inspection, and requests for surveys of establishments. Address correspondence to Denver Federal Center, P.O. Box 25387, Building 45, Denver, CO 80225. Phone number: (303) 236-9800.

The Acting Administrator, FSIS, has determined that there is good cause for issuing this final rule without prior notice and opportunity for public comment. FSIS has determined that it is in the public interest to ensure a smooth, orderly and expeditious transition to Federal inspection. Representatives of the State of New Mexico have requested that the State be