

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 98-062-3]

#### Update of Nursery Stock Regulations; Correction

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** We are correcting an error in the rule portion of a final rule that amended the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. The final rule was published in the **Federal Register** on August 20, 2003, and was effective on September 19, 2003.

**EFFECTIVE DATE:** September 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Thomas, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-5214.

**SUPPLEMENTARY INFORMATION:** On August 20, 2003, we published in the **Federal Register** (68 FR 50039-50048, Docket No. 98-062-2) a final rule that amended the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants.

In the rule portion of the final rule, § 319.37-8, in paragraph (g), we provided an address in Riverdale, MD, to which requests for the guidelines

established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization for conducting pest risk assessments may be sent. The office that handles these requests has been transferred to another location, but we inadvertently did not update the address in the final rule. This document corrects that error.

In FR Doc. 03-21304, published on August 20, 2003 (68 FR 50039-50048), make the following correction: On page 50047, in the third column, in § 319.37-8(g), correct "Permits and Risk Assessment, Commodity Risk Analysis Branch, 4700 River Road Unit 133, Riverdale, MD 20737" to read "Center for Plant Health Science and Technology, Plant Epidemiology and Risk Assessment Laboratory, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606".

Done in Washington, DC, this 17th day of October, 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03-26784 Filed 10-22-03; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 801

RIN 0580-AA57

#### Official Performance Requirements for Grain Inspection Equipment

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the United States Grain Standards Act, as amended, entitled Official Performance Requirements for Grain Inspection Equipment by removing regulation on tolerance for dividers. This change is being made to simplify inspection regulations. The removed section has been determined to be unnecessary, since testing of dividers has been modified in current instructions and directives to eliminate testing with grain and to require only a visual condition examination of grain dividers.

**DATES:** This rule is effective December 22, 2003 without further action, unless adverse comments or written notice of intent to submit adverse comments are received by November 24, 2003. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Comments or notice of intent must be sent to Tess Butler, USDA, GIPSA, Room 1647-S, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250-3604, FAX (202) 690-2755. All comments received will be made available for public inspection at the above address during regular business hours (8 a.m.-3:30 p.m.) (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** John Giler, Chief, Policies and Procedures Branch at (202) 720-0252 or e-mail: [John.C.Giler@usda.gov](mailto:John.C.Giler@usda.gov).

**SUPPLEMENTARY INFORMATION:** Each type (design) of grain divider receives a thorough laboratory test and evaluation, prior to approval. The type of divider must provide a statistically unbiased division of the sample into representative portions. Representative portions are sub-samples that contain the same percentage of various components as the sample from which they are taken. Also, for ease of use, each must meet criteria for accuracy and repeatability of portion weight delivered.

Testing of each individual divider on a periodic basis at field locations was intended to ensure that they function properly. After receiving recommendations from a task force on equipment testing requirements and from other experienced personnel, GIPSA determined that field testing dividers with grain samples to evaluate the weight of grain delivered to each collection pan is unnecessary. It was determined that the test was actually a user adjustment that was more appropriately performed as a maintenance function, on an as needed basis.

Because of the prior laboratory approval testing, testing of dividers was modified in instructions and directives to eliminate testing with grain and to require only a visual condition examination of grain dividers. This practice is in accord with the visual examination required of similar kinds of equipment used for sampling grain.

**Executive Order 12866**

The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This action simplifies the regulations concerning official performance requirements for grain inspection equipment by removing unnecessary language. No cost to affected entities results from this action.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The Act provides in section 87g that no State or 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 an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

**Regulatory Flexibility Act Certification**

Donna Reifschneider, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This action simplifies the regulations concerning official performance requirements for grain inspection equipment by removing unnecessary language concerning testing of dividers. There currently are 56 official agencies, 43 private, 7 States and 6 delegated states under the United States Grain Standards Act. Most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further the regulations are applied equally to all entities.

**Information Collection and Recordkeeping Requirements**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995. (44 U.S.C. 3501, *et seq.*)

**Background**

FGIS is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date

of publication in the **Federal Register** unless we receive written comments or written notice of intent to submit comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed.

If we receive written comments or written notice of intent to submit comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered and a final rule addressing the comments will be published.

As discussed above, if we receive no written comments or written notice of intent to submit comments within 30 days of publication of this direct final rule, this final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this final rule, confirming that it is effective on the date indicated in this document.

**List of Subjects in 7 CFR Part 801**

Grain inspection, Scientific equipment, and Weighing.

- For reasons set forth in the preamble, 7 CFR part 801 is amended as follows:
- 1. The authority citation for Part 801 continues to read as follows:

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

**§ 801.10 [Removed]**

- 2. Section 801.10 is removed from the CFR and is reserved.

**Donna Reifschneider,**  
*Administrator.*

[FR Doc. 03-26388 Filed 10-22-03; 8:45 am]

**BILLING CODE 3410-EN-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 993**

[Docket No. FV03-993-4 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the

assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2003-04 and subsequent crop years from \$2.60 to \$2.00 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California.

Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer 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.

**EFFECTIVE DATE:** November 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901; Fax (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 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 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."

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, 2003, and continue until