Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SOCIAL SECURITY ADMINISTRATION

5 CFR Chapter LXXXI

RINs 0960–AE48, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Social Security Administration

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules; reopening of comment period.

SUMMARY: On February 11, 2005, SSA, with the concurrence of the Office of Government Ethics (OGE), published a notice of proposed rulemaking (NPRM) in the **Federal Register** (70 FR 7192–7196) that would supplement, for officers and employees of SSA, the OGE Standards of Ethical Conduct for Employees of the Executive Branch. The proposed regulations would set forth prohibitions and prior approval requirements for certain outside employment and other outside activities for all SSA employees, except special Government employees, and would set forth additional prior approval requirements for SSA Administrative Law Judges. To allow the public additional time to send us comments, we are reopening the comment period.

DATES: To be sure that your comments are considered, we must receive them by June 3, 2005.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Asim A. Akbari, Office of the General Counsel, Office of General Law, telephone (410) 966–6581, fax (410) 597–0071, or TTY 1–410–966–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On February 11, 2005 (70 FR 7192–7196), we published ''Supplemental Standards of Ethical Conduct for Employees of the Social Security Administration'' as an NPRM, with a 30-day public comment period. This NPRM would set forth prohibitions and prior approval requirements for certain outside employment and other outside activities for all SSA employees, except special Government employees, and would set forth additional prior approval requirements for SSA Administrative Law Judges. SSA has received a request to extend the comment period. This factor, and the importance of the proposed rule, makes it appropriate to reopen the comment period for another 30 days, through June 3, 2005. If you have already provided comments on the NPRM, your comments will be considered and you do not need to resubmit them.

Dated: April 21, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Approved: April 25, 2005.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

[FR Doc. 05–8848 Filed 5–3–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV05–983–3 PR]

Pistachios Grown in the State of California; Termination of Language in Table 3, ''Maximum Defect and Minimum Size Levels''

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would terminate language in Table 3, ''Maximum Defect and Minimum Size Levels,'' of the marketing order regulating pistachios produced in the State of California. This language was erroneously included in Table 3 at the time of promulgation of the order. Correction of the table was unanimously recommended by the Administrative Committee for Pistachios, the committee responsible for local administration of the order.

DATES: Comments received by May 19, 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: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah, 84532; Telephone: (435) 259–7988, Fax: (435) 259–4945; or Rose Aguayo, California Marketing Field Office, 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.

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 proposed 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 date of the entry of the ruling.

This action would terminate language in Table 3, ''Maximum Defect and Minimum Size Levels,'' of the marketing order regulating pistachios produced in the State of California (69 FR 17844, April 5, 2004). The termination would apply to language in two portions of the table: (1) In the ''Internal (Kernel) Defects'' section, the words ''external or'' would be removed from the heading ''Total external or internal defects allowed'' because this section of the table only covers internal defects allowed, and (2) the sub-heading ''Minimum permissible defects (percent by weight)'' would be removed so that all information in the table would be captured under the table heading ''Maximum permissible defects (percent by weight).'' This language was erroneously included in Table 3 at the time of promulgation of the order. Termination of this language would remove these errors and would allow Table 3 to read as originally intended by the group establishing the order.

Suspension of this language was unanimously recommended by the Administrative Committee for Pistachios (ACP), the group responsible for local administration of the order, at a December 15, 2004, committee meeting. However, because this is a permanent correction, USDA is proposing to remove and terminate the language.

The federal marketing order regulating the handling of pistachios produced in the State of California was promulgated in 2004. Provisions to establish the ACP became effective on April 6, 2004 (69 FR 17844, April 5, 2004). The regulatory provisions of the order will become effective on August 1, 2005 (70 FR 661, January 5, 2005; 70 FR 4191, January 28, 2005).

Section 983.39, Minimum quality levels, of the order establishes maximum defect and minimum size tolerances for pistachios produced and handled in California. Table 3 of the order, which is included in § 983.39, describes the maximum thresholds for defects, as well as the maximum tolerance for minimum-sized pistachios, of the provisions in table format. Table 3 also serves as a reference tool for handlers regulated by the order to easily interpret the written quality and size provisions of the order under § 983.39.

ACP preparations for implementing the regulatory provisions of the order have brought to light that two sub-headings in Table 3, ''Maximum Defect and Minimum Size Levels,'' were erroneously included at the time of promulgation. In the ''Internal (Kernel) Defects'' section, the words ''external or'' would be removed from the heading ''Total external or internal defects allowed'' because this section of the table only applies to internal defects, not external defects. Additionally, the sub-heading ''Minimum permissible defects (percent by weight)'' would be removed from the table so that all information in the table would be captured under the table heading ''Maximum Permissible Defects (percent by weight).'' Termination of this language would remove these errors and would allow Table 3 to read as originally intended by the group responsible for promulgating the order.

This language should be removed prior to the effective date of the regulatory provisions of the order (August 1, 2005).

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to the requirements set for in the Regulatory Flexibility Act (RFA) the administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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 20 handlers of California pistachios subject to regulation the marketing order and approximately 741 producers in the production area. 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). Eight out of the 20 handlers subject to regulation have annual pistachio receipts of at least $6,000,000. In addition, 722 producers have annual receipts less than $750,000. Thus, the majority of pistachio producers and handlers regulated under the marketing order may be classified as small entities.

This action would terminate language in Table 3, ''Maximum Defect and Minimum Size Levels'' in § 983.39 of the order. The termination would apply to language in two portions of the table: (1) In the ''Internal (Kernel) Defects'' section, the words ''external or'' would be removed from the heading ''Total external or internal defects allowed'' because this section of the table only pertains to internal defects, and (2) the sub-heading ''Minimum permissible defects (percent by weight)'' would be removed so that all information in the table would be captured under the table heading ''Maximum permissible defects (percent by weight).'' Neither the thresholds contained in the table nor the regulatory provisions outlined in § 983.39 of the order would be impacted by this termination. The termination would serve to facilitate more accurate interpretation of the information presented in Table 3. Thus, no significant impact on large or small

entities is anticipated as a result of this proposal.

One alternative to this action would be to not remove and terminate the identified language in Table 3. However, at a December 15, 2004 meeting of the ACP, it was determined that if this language were not removed from the table, handlers regulated under the order may not correctly interpret the thresholds outlined in Table 3. Thus, the ACP unanimously recommended that the table be corrected. Committee meetings are open to the public. No comments or recommendations against the recommendation were received.

A comment period of 15 days after publication of this proposal in the **Federal Register** is deemed appropriate so that the termination of language in Table 3 can be made effective as soon as possible and prior to the beginning of the 2005–2006 production year, which begins September 1, 2005, and ends August 31, 2006. Pistachios harvested and received in August of any year are applied to the subsequent production year for marketing order purposes. This proposal has been discussed at open meetings of the ACP and is fully supported.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0215. This action imposes no additional reporting or recordkeeping requirements on either small or large pistachio 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.

The Committee's meeting was publicized and all Committee members and alternate Committee members, representing both large and small entities, were invited to attend the meeting and participate in Committee deliberations. The Committee itself is composed of 11 members, of which 8 members are growers, 2 are handlers, and one represents the public.

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.

In summary, the termination would apply to language in two portions of the table. In the ''Internal (Kernel) Defects'' section, the words ''external or'' would be removed and terminated, and the sub-heading ''Minimum permissible defects (percent by weight)'' would be removed and terminated so that all information in the table would be captured under the table heading ''Maximum permissible defects (percent by weight).''

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 983.39 [Amended]

2. In § 983.39, Table 3 is revised to read as follows:

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
EXTERNAL (SHELL) DEFECTS		
1. Non-splits & not split on suture	10.0	
(i) Maximum non-splits allowed	4.0	
2. Adhering hull material	2.0	
3. Dark stain	3.0	
4. Damage by other means, other than 1, 2 and 3 above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot.	10.0	
INTERNAL (KERNEL) DEFECTS		
1. Damage	6.0	3.0
Immature kernel (Fills <75%–>50% of the shell)		
Kernel spotting (Affects ⅛ aggregate surface)		
2. Serious damage	4.0	2.5
Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay		
(i) Maximum insect damage allowed	2.0	0.5
Total internal defects allowed	9.0	
OTHER DEFECTS		
1. Shell pieces and blanks	2.0	
(Fills <50% of the shell)		
(i) Maximum blanks allowed	1.0	
2. Foreign material—No glass, metal or live insects permitted	0.25	0.1
3. Particles and dust	0.25	
4. Loose kernels	6.0	
Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hole screen	5.0	

Dated: April 29, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–8861 Filed 5–3–05; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2005–13]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules defining ''Federal election activity'' under the Federal Election Campaign Act of 1971, as amended (''FECA''). The proposed changes would retain the existing definition of ''voter registration activity'' and modify the existing definitions of ''get-out-the-vote activity'' and ''voter identification'' consistent with the ruling of the U.S. District Court for the District of Columbia in *Shays* v. *FEC*. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before June 3, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, addressed to Ms. Mai T. Dinh, Assistant General Counsel, and submitted in either electronic, facsimile or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments must be sent to either *FEAdef@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov*. If the electronic comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with hard copy follow-up. Hard copy comments and hard copy follow-up of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law No. 107–155, 116 Stat. 81 (2002), amended FECA by adding a new term, ''Federal election activity'' (''FEA''), that describes certain activities that State, district, and local party committees must pay for with either Federal funds [1] or a combination of Federal and Levin funds.[2] 2 U.S.C. 431(20) and 441i(b)(1); *see also* 2 U.S.C. 441i(d)(1) (prohibiting national, State, district or local party committees from soliciting or directing non-Federal funds to 501(c) tax-exempt organizations which engage in FEA); 2 U.S.C. 441i(e)(4) (limiting Federal candidate and officeholder solicitations for funds on behalf of 501(c) tax-exempt organizations whose principal purpose is to conduct certain types of FEA). The Commission further defined FEA in 11 CFR 100.24. In *Shays* v. *FEC*, 337 F. Supp.2d 28, 101, 106–07 (D.D.C. 2004), *appeal docketed*, No. 04–5352 (D.C. Cir. Sept. 28, 2004) (''*Shays*''), the district court held that certain parts of the definitions of ''voter registration activity'' and ''get-out-the-vote activity'' (''GOTV'') in 11 CFR 100.24(a)(2) and (3), respectively, had not been promulgated with adequate notice and opportunity for comment. In addition, the district court held that certain aspects of the definitions of ''get-out-the-vote activity'' and ''voter identification'' in 11 CFR 100.24(a)(3) and (4), respectively, were inconsistent with Congressional intent. *Shays* at 104, 107 n.83, and 108.[3] The district court remanded the case for further action consistent with the court's decision. The Commission has initiated this rulemaking to comply with the district court order.

1. 11 CFR 100.24(a)(2)—Definition of ''Voter Registration Activity''

BCRA does not define ''voter registration activity'' other than to specify that it is only FEA when it is conducted 120 days or fewer before a regularly scheduled Federal election. *See* 2 U.S.C. 431(20)(A)(i). Current section 100.24(a)(2) defines voter registration activity to mean ''contacting individuals by telephone, in person, or by *other individualized means to assist them in registering to vote.*'' (Emphasis added). The definition also includes a non-exhaustive list of examples of costs that are included, such as printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

In *Shays,* the plaintiffs argued that the requirement that voter registration activity ''assist'' in the registration of voters impermissibly narrowed the definition because it excludes from its reach encouragement that does not constitute actual assistance. *See Shays* at 98. The district court found that the Commission's interpretation of section 431(20)(A) does not conflict with the expressed intent of Congress. *Shays* at 99–100. ''[T]he Court note[d] that it is possible to read the term 'voter registration activity' to encompass those activities that actually register persons to vote, as opposed to those that only encourage persons to do so without more. [citation omitted]. Moreover, the Court [did not] find based on the record presented that the 'common usage' of the term 'voter registration activity' necessarily includes the latter type of activities.'' *Id.* at 99.[4]

The court also held that the question of whether the regulation satisfies step two of the *Chevron* test—whether the Commission's interpretation of the statute is a permissible one—was not ripe for review. While the court found that the regulation is not an impermissible construction of BCRA,

[1] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g).

[2] ''Levin funds'' are funds that are raised by State, district or local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

[3] The district court described the first step of the *Chevron* analysis, which courts use to review an agency's regulations: ''a court firsts asks 'whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.' '' *See Shays* at 51 (quoting *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837, 842–43 (1984)).

[4] The Court also noted an apparent discrepancy between 11 CFR 100.133 and 11 CFR 106.5(a)(2)(iv) with regard to the definition of voter registration and get-out-the-vote activity. *See Shays* at 99 n.71, 103 n.77. However, any such comparison is no longer relevant since the latter regulation sunsetted on December 31, 2002.