

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 993****[Docket No. FV97-993-1 IFR]****Dried Prunes Produced in California; Increased Assessment Rate****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule increases the assessment rate for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1997-98 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes produced in California. Authorization to assess prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997-98 crop year covers the period August 1 through July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 1, 1997. Comments received by September 3, 1997 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, or Diane Purvis, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

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 produced 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 (Department) 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 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 prunes beginning August 1, 1997, and continuing 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 the Secretary 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 the Secretary 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 the Secretary'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 increases the assessment rate established for the Committee for the 1997-98 and subsequent crop years from \$1.50 to \$1.60 per salable ton of dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect

assessments from handlers to administer the program. The members of the Committee are producers and handlers 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 in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information available to the Secretary.

The Committee met on June 24, 1997, and unanimously recommended 1997-98 expenditures of \$331,960 and an assessment rate of \$1.60 per salable ton of dried prunes. In comparison, last year's budgeted expenditures were \$283,500. The assessment rate of \$1.60 is \$0.10 higher than the rate currently in effect. The higher assessment rate is needed to cover increases in costs for the Committee's acreage survey and staff salaries.

The major expenditures recommended by the Committee for the 1997-98 crop year include \$176,300 for salaries, wages, and benefits, \$30,000 for research and development, \$23,000 for office rent, \$21,000 for travel, \$20,000 for acreage survey, \$8,060 for the reserve for contingency, \$5,000 for office supplies, \$9,000 for rental of equipment, and \$8,000 for data processing. Budgeted expenses for these items in 1996-97 were \$142,120, \$30,000, \$22,000, \$20,000, \$11,000, \$8,430, \$6,500, \$3,800, and \$6,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by its estimate of assessable California dried prunes for 1997-98. Assessable tonnage for the year is estimated at 207,475 salable tons which should provide \$331,960 in assessment income. Income derived from handler assessments and interest income will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997-98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the department.

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,400 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of California dried prune producers and handlers may be classified as small entities.

Last year, as a percentage, about 29 percent of the handlers shipped over \$5,000,000 worth of dried prunes and 71 percent of the handlers shipped under \$5,000,000 worth of prunes. In addition, based on acreage, production, producer prices provided by the

Committee, and the total number of dried prune producers, the average annual producer revenue is approximately \$136,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1997-98 and subsequent crop years from \$1.50 to \$1.60 per salable ton. The Committee unanimously recommended 1997-98 expenditures of \$331,960 and an assessment rate of \$1.60 per salable ton of California dried prunes. The assessment rate of \$1.60 is \$0.10 more than the rate currently in effect. The Committee estimated assessable dried prunes in 1997-98 at 207,475 salable tons. Thus, the current \$1.50 rate of assessment would only provide \$311,212 in revenue, which would not be adequate to meet the Committee's 1997-98 budgeted expenses. The \$1.60 rate should provide \$331,960 in assessment income and be adequate to meet this year's expenses.

The Committee's increase from \$283,500 to \$331,960 in budgeted expenses for 1997-98 results primarily from increases in the following line item categories—total personnel (salaries, wages, and benefits), rental of equipment, data processing, and acreage survey. Expenses for these items for 1997-98, with last year's budgeted expenses in parenthesis, are: Total personnel—\$176,300 (\$142,120); rental of equipment—\$9,000 (\$3,800); data processing—\$8,000 (\$6,500); and acreage survey—\$20,000 (\$11,000). The increase is needed to provide wage and benefit increases for the staff. The increase in acreage survey is necessary to allow the Committee to conduct a more comprehensive dried prune acreage survey than conducted last year. The Committee considered the alternative of conducting a smaller scale survey at less cost, but decided that a survey of all California's producing counties was needed to help the industry make production and marketing plans. In making its budget recommendation, the Committee felt that all of the expense levels were appropriate and reasonable.

Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

California dried prune price information is not yet available for the 1997-98 crop year. Producer prices averaged \$940 per ton in the previous

crop year. The proposed \$1.60 per ton assessment rate for the 1997-98 crop year is insignificant when compared to the average prices received the previous year and what is expected for the 1997-98 crop year.

This action will increase the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. 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 24, 1997, 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 information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any 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.

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

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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997-98 crop year begins on August 1, 1997, and the marketing order requires that the rate of assessment for each crop year apply to

all assessable dried prunes handled during such 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 30-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

Dried prunes, Marketing agreements, 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.

§ 993.347 [Amended]

2. Section 993.347 is amended by removing “August 1, 1996,” and adding in its place “August 1, 1997,” and by removing “\$1.50” and adding in its place “\$1.60.”

Dated: July 29, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.
[FR Doc. 97–20457 Filed 8–1–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA–97–06]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document continues the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, requested continuation of the current suspension with a change to the producer diversion provision. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the Texas market will continue

to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: August 1, 1997, through July 31, 1999.

FOR FURTHER INFORMATION CONTACT:

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address Clifford—M—Carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 7, 1997; published May 13, 1997 (62 FR 26255).

Notice of Revised Proposed Suspension: Issued June 23, 1997; published June 27, 1997 (62 FR 34676).

The Department is issuing this final 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 a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Secretary 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility

Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. For the purposes of determining which dairy farms are “small businesses,” the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 1,805 producers was pooled on the Texas Federal milk order. Of these producers, 1,350 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 24 handlers operating pool plants under the Texas order. Five of these handlers would be considered small businesses.

This rule continues the suspension of segments of the pool plant and producer milk definitions under the Texas order. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. Additionally, this rule will not increase the regulatory burden on handlers since the suspension has been in effect during the prior two-year period. The suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 7, 1997 (62 FR 26255), concerning a proposed suspension of certain provisions of the order. A revised proposed suspension was issued on June 23, 1997, and published in the **Federal Register** on June 27, 1997 (62 FR 34676). Interested persons were