

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.

In addition, the Committee's meeting was widely publicized throughout the 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 November 29, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, March 6, 2001, (66 FR 13454). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 16, 2001. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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 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.

#### 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. A new section 993.408 is added to read as follows:

#### **§ 993.408 Undersized prune regulation for the 2001–02 crop year.**

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2001–02 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes,  $2\frac{4}{32}$  of an inch in diameter; for non-French prunes,  $3\frac{0}{32}$  of an inch in diameter.

Dated: June 1, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–14291 Filed 6–4–01; 10:42 am]

**BILLING CODE 3410–02–U**

### SMALL BUSINESS ADMINISTRATION

#### 13 CFR Parts 107 and 121

#### Size Eligibility Requirements for SBA Financial Assistance and Size Standards for Agriculture

**AGENCY:** Small Business Administration.

**ACTION:** Direct final rule.

**SUMMARY:** This final rule implements legislative changes to size eligibility requirements for assistance from Small Business Investment Companies (SBICs) and Certified Development Companies (CDCs), and for the Agriculture industry.

The Small Business Investment Improvement Act of 1999, codified in sections 103(5) and 103(12) of the Small Business Investment Act of 1958, as amended, established a method for determining the eligibility of a business that is not required to pay Federal income tax at the corporate level, but that is required to pass income through to its shareholders or partners. The new method treats “pass-through” enterprises the same as firms that pay Federal taxes for the purpose of size standard determinations.

The Small Business Reauthorization Act of 2000, codified in section 3(a)(1) of the Small Business Act, increases the size standards used for Agriculture from \$500,000 to \$750,000 in average annual receipts.

**DATES:** The rule will become effective August 6, 2001, unless adverse comment is received prior to July 9, 2001. If an adverse comment is received,

SBA will publish a timely withdrawal of the rule in the **Federal Register**. The Agency may proceed to publish a proposed rule following notice and comment procedures.

**ADDRESSES:** Send written comments to Gary M. Jackson, Assistant Administrator for Size Standards, U.S. Small Business Administration, 409 Third St., SW., Mail Code 6530, Washington, DC 20416; or via e-mail to [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205–6618.

#### **SUPPLEMENTARY INFORMATION:**

#### **SBIC/CDC**

A business seeking financial assistance from an SBIC or a CDC must qualify as a “small-business concern” as defined in section 103(5) of the Small Business Investment Act of 1958, as amended (the Act), and as implemented by 13 CFR 121.301(b) for CDCs and 13 CFR 121.301(c) for SBICs. For SBIC financial assistance, a business also may need to qualify as a “smaller enterprise” as defined in section 103(12) of the Act, and as implemented by 13 CFR 107.710(a). Each of these definitions requires a firm to meet either the size standard for its primary industry or certain net worth and net income tests. The net income tests measure the firm's average net income after Federal income taxes for the preceding 2 years.

On April 5, 1999, Public Law 106–9, the “Small Business Investment Improvement Act of 1999” which expands opportunities for small businesses to receive investment capital from banks and traditional investment sources, became effective. This legislation established a new method for applying the net income test to a business that is not required to pay Federal income tax at the enterprise level, but that is required to pass income through to its shareholders, partners, or other owners. This new method permits such businesses to use a specified formula to impute a tax to the business and to compute “after-tax” net income. The intent is to permit “pass-through” enterprises to be treated the same as concerns that pay Federal income taxes for purposes of SBA size standard determinations.

As authorized by Public Law 106–9, this final rule revises 121.301(b), 121.301(c) and 107.710(a) to permit a business concern that does not pay Federal income taxes at the enterprise level to deduct an imputed Federal income tax expense from its net income. The business concern computes this deduction by multiplying its net income

by the marginal Federal income tax rate that would have applied if the concern were a taxable corporation. If the business concern is also treated as a pass-through entity for State and local income tax purposes, it can compute an additional deduction equal to its net income multiplied by the State income tax rate (or combined State and local income tax rate, if applicable) that would have applied if it were a taxable corporation. In this case, the State/local tax deduction must be computed first and then subtracted from net income before computing the deduction for Federal income taxes.

#### Agriculture Industry

On December 21, 2000, Public Law 106-554, the "Small Business Reauthorization Act of 2000" became effective. Section 806(b) of this legislation increases the size standard for small businesses in the Agriculture industry from \$500,000 in average annual receipts to \$750,000 in average annual receipts. This change affects Agriculture industries under North American Industry Classification System (NAICS) codes, Sector 11, "Agriculture, Forestry, Fishing and Hunting," Subsector 111 "Crop Production" (NAICS Codes 111110 through 111998) and Subsector 112, "Animal Production" (NAICS Codes 112111 through 112990). Not affected by this legislative change are NAICS codes 112112, "Cattle Feedlots" and 112310, "Chicken Egg Production" as their size standard is currently above \$750,000. Those size standards remain at \$1.5 million and \$9.0 million, respectively.

The SBA is publishing this regulation as a direct final rule because the SBA believes the rule is non-controversial. It is merely implementing provisions of Public Laws 106-9 and 106-554. As such, SBA believes that this rule will elicit no significant adverse comment.

#### Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This final rule is not a "significant" regulatory action for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule is merely implementing provisions of Pub. L. 106-9 and 106-554. This rule does not impose costs upon the businesses that might be affected by it. The rule will have no effect on the amount or dollar value of any contract requirement or on the number of requirements reserved for the small business set-aside program. Therefore, it will not have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule will have no federalism implications.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule contains no new reporting or recordkeeping requirements.

#### List of Subjects in 13 CFR Parts 107 and 121

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated forth above, SBA amends 13 CFR parts 107 and 121 as follows:

#### PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for 13 CFR Part 107 continues to read as follows:

**Authority:** 15 U.S.C. 662, 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.710, revise paragraph (a) to read as follows:

##### § 107.710 Requirement to finance smaller enterprises.

\* \* \* \* \*

(a) *Definition of Smaller Enterprise.* A Smaller Enterprise means any small business concern that:

(1) Both together with its Affiliates, and by itself, meets the size standard of § 121.201 of this chapter at the time of Financing for the industry in which it is then primarily engaged; or

(2) Together with its affiliates has a net worth of not more than \$6 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than \$2 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (a)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

\* \* \* \* \*

#### PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR Part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5).

2. In § 121.201, revise the referenced NAICS Codes and size standards in the table "SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY," under the heading Sector 11—Agriculture, Forestry, and Fishing—Subsector 111—Crop Production, and Subsector 112—Animal Production, to read as follows:

##### § 121.201 What size standards has SBA identified by North American Industry Classification System codes?

\* \* \* \* \*

## SMALL BUSINESS SIZE STANDARD BY NAICS INDUSTRY

NAICS code	Description (N.E.C.=not elsewhere classified)	Size standard in number of employees or millions of dollars
<b>Sector 11—Agriculture, Forestry, and Fishing</b>		
<b>Subsector 111—Crop Production</b>		
111110	Soybean Farming	\$0.75
111120	Oilseed (except Soybean) Farming	0.75
111130	Dry Pea and Bean Farming	0.75
111140	Wheat Farming	0.75
111150	Corn Farming	0.75
111160	Rice Farming	0.75
111191	Oilseed and Grain Combination Farming	0.75
111199	All Other Grain Farming	0.75
111211	Potato Farming	0.75
111219	Other Vegetable (except Potato) and Melon Farming	0.75
111310	Orange Groves	0.75
111320	Citrus (except Orange) Groves	0.75
111331	Apple Orchards	0.75
111332	Grape Vineyards	0.75
111333	Strawberry Farming	0.75
111334	Berry (except Strawberry) Farming	0.75
111335	Tree Nut Farming	0.75
111336	Fruit and Tree Nut Combination Farming	0.75
111339	Other Noncitrus Fruit Farming	0.75
111411	Mushroom Production	0.75
111419	Other Food Crops Grown Under Cover	0.75
111421	Nursery and Tree Production	0.75
111422	Floriculture Production	0.75
111910	Tobacco Farming	0.75
111920	Cotton Farming	0.75
111930	Sugarcane Farming	0.75
111940	Hay Farming	0.75
111991	Sugar Beet Farming	0.75
111992	Peanut Farming	0.75
111998	All Other Miscellaneous Crop Farming	0.75
<b>Subsector 112—Animal Production</b>		
112111	Beef Cattle Ranching and Farming	0.75
112112	Cattle Feedlots	1.50
112120	Dairy Cattle and Milk Production	0.75
112210	Hog and Pig Farming	0.75
112310	Chicken Egg Production	9.00
112320	Broilers and Other Meat Type Chicken Production	0.75
112330	Turkey Production	0.75
112340	Poultry Hatcheries	0.75
112390	Other Poultry Production	0.75
112410	Sheep Farming	0.75
112420	Goat Farming	0.75
112511	Finfish Farming and Fish Hatcheries	0.75
112512	Shellfish Farming	0.75
112519	Other Animal Aquaculture	0.75
112910	Apiculture	0.75
112920	Horse and Other Equine Production	0.75
112930	Fur-Bearing Animal and Rabbit Production	0.75
112990	All Other Animal Production	0.75
*	*	*

3. In § 121.301, revise paragraphs (b) and (c) to read as follows:

**§ 121.301 What size standards are applicable to financial assistance programs?**

\* \* \* \* \*

(b) For Development Company programs, an applicant must meet one of the following standards:

- (1) The same standards applicable under paragraph (a) of this section; or
- (2) Including its affiliates, tangible net worth not in excess of \$6 million, and average net income after Federal income

taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$2 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners,

the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (b)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Sum the results obtained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of \$18 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$6 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (c)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

\* \* \* \* \*

Dated: May 30, 2001.

**John Whitmore,**

*Acting Administrator.*

[FR Doc. 01-14222 Filed 6-6-01; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE167, Special Condition 23-107-SC]

#### Special Conditions; Diamond DA 40; Protection of Systems for High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to Diamond Aircraft Industries GmbH, N.A. Otto-Str. 5, A-2700 Wiener Neustadt, Austria, for a Type Certificate for the Model DA 40 airplane. This airplane will have the potential for novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The current design does not include novel and unusual design features such as the installation of electronic flight instrument system (EFIS) displays; however, Diamond Aircraft Industries GmbH would like to make the applicable tests necessary for these types of installations for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is July 9, 2001. Comments must be received on or before July 9, 2001.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE167, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE167. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE167." The postcard will be date stamped and returned to the commenter.

#### Background

On May 11, 2000, Diamond Aircraft Industries GmbH, N.A. Otto-Str. 5, A-2700 Wiener Neustadt, Austria, made an application to the FAA for a new Certificate for the Model DA 40 airplane. The current design does not include novel and unusual design features such as the installation of electronic flight instrument system (EFIS) displays; however, Diamond Aircraft Industries GmbH would like to make the applicable tests necessary for these types of installations. The applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to