

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of oranges, grapefruit, tangerines, and tangelos in the production area.

Order Relative to Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

It is therefore ordered, That on and after the effective date hereof, all handling of oranges, grapefruit, tangerines, and tangelos grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed order further amending the order contained in the Secretary's Decision issued by the Administrator on April 6, 2009, and published in the **Federal Register** on April 13, 2009 (74 FR 16798), shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, Title 7, Chapter IX of the Code of Federal Regulations is amended by amending part 905 to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 905.22 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 905.22 Nominations.

(a) * * *

(2) Each nominee shall be a producer in the district from which he or she is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a producer. At least two of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(b) * * *

(2) Nomination of at least two members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations for not more

than six members and their alternates shall be made by handlers who are not so affiliated. In voting for nominees, each handler or his or her authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit by such handler during the then current fiscal period.

■ 3. Revise § 905.23 to read as follows:

§ 905.23 Selection.

(a) From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select one member and one alternate member to represent District 2 and two members and two alternate members each to represent Districts 1, 3, 4, and 5 or such other number of members and alternate members from each district as may be prescribed pursuant to § 905.14. At least two such members and their alternates shall be affiliated with bona fide cooperative marketing organizations.

(b) From the nominations made pursuant to § 905.22(b) or from other qualified persons, the Secretary shall select at least two members and their alternates to represent bona fide cooperative marketing organizations which are handlers, and the remaining members and their alternates to represent handlers who are not so affiliated.

■ 4. In § 905.29, redesignate paragraph (b) as paragraph (c), and add a new paragraph (b) to read as follows:

§ 905.29 Inability of members to serve.

* * * * *

(b) If both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum: *Provided*, That such alternate member represents the same group affiliation as the absent member. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

* * * * *

■ 5. Revise paragraph (c) of § 905.34 to read as follows:

§ 905.34 Procedure of committees.

* * * * *

(c) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

* * * * *

■ 6. Add a new § 905.54 to read as follows:

§ 905.54 Marketing, research and development.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of, projects including production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fruit. The expenses of such projects shall be paid by funds collected pursuant to § 905.41. Upon conclusion of each project, but at least annually, the committee shall summarize the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any project carried out under this section. Also, for each project, the contracting party shall be required to maintain records of money received and expenditures, and such shall be available to the committee and the Secretary.

Dated: September 2, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–21656 Filed 9–8–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–FV–08–0017; FV08–920–2 FR]

Kiwifruit Grown in California; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the reporting requirements currently prescribed under the marketing order that regulates the handling of kiwifruit grown in California. The order is administered locally by the Kiwifruit Administrative Committee (Committee). This rule requires handlers who ship 100,000 or more trays per season to file weekly shipment and price information with the Committee. Shipments of organic kiwifruit are exempt from this requirement. The Committee will use this information to prepare its marketing policy statements and annual reports and to provide timely information to the industry to assist them in making

marketing decisions throughout the season.

DATES: *Effective Date:* September 10, 2009.

FOR FURTHER INFORMATION CONTACT:

Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or e-mail: Debbie.Wray@ams.usda.gov or Kurt.Kimmel@ams.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@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is 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 (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.

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 final rule adds a new reporting requirement and form to those currently specified in the order's administrative rules and regulations. This change will

allow the Committee to collect weekly shipment and price information from kiwifruit handlers who ship 100,000 or more trays per season. Under this regulation, handlers will not be required to provide weekly shipment and price information on shipments of organic kiwifruit. The information collected will be used by the Committee to prepare its marketing policy statement as required under the order. The information will also be used to generate timely reports for the industry as a whole to use in making marketing decisions throughout the season. This rule was recommended by the Committee at its meetings on September 6, 2007; January 30, 2008; and April 22, 2008.

Section 920.34 of the order requires the Committee to prepare an annual report for presentation to the Secretary and the industry. The annual report provides a cumulative review of industry statistics as well as information about program activities and expenditures. Section 920.50 of the order requires the Committee to prepare an annual marketing policy report for submission to the Secretary. The marketing policy describes expected kiwifruit production, quality, and marketing conditions. Along with other pertinent information, the marketing policy provides the basis for the recommendation of appropriate kiwifruit handling regulations for the upcoming season. Section 920.60 of the order authorizes the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform these duties. The provisions of § 920.60(c) require that handlers maintain copies of all kiwifruit receipts and disposals for at least two succeeding fiscal years to verify their shipping reports.

The Committee's current reporting requirements are specified in § 920.160 of the order's administrative rules and regulations. This section includes requirements that handlers submit shipment reports and the Kiwifruit Inventory Shipping System (KISS) form, which consists of three reports: KISS/Add Inventory, KISS/Deduct Inventory, and KISS/Shipment.

Handlers who ship fewer than 10,000 trays per season are only required to file the shipment report twice per year and are not required to file the KISS form. Handlers who ship 10,000 trays or more per season are required to file the shipment report monthly and all three sections of the KISS form monthly or semi-monthly during certain months. The Committee provides forms to assist handlers with supplying the required information.

Kiwifruit shipments generally begin in September and continue through July. The Committee requires handlers who ship 10,000 trays or more to file their initial shipment reports by the fifth day of the month following the month in which their first shipments are made. This report is used to track shipments by type, weight, and destination.

The Committee has established November 5 as the deadline for filing the initial KISS reports. Subsequent reports are to be filed on the fifth day of each month throughout the season, with biweekly reports required for the months of December, January, and February. The KISS/Shipment report is used to report shipments by fruit size and pack type. The KISS/Add Inventory and KISS/Deduct Inventory reports are used to report changes in inventory.

This final rule revises § 920.160 by adding a new reporting requirement and form. Under the new regulation, handlers who ship 100,000 tray equivalents or more per season will be required to submit weekly shipment and price data on the new KISS Price/Shipment report form. The information collected on the KISS Price/Shipment report will include data on gross f.o.b. sales and the total number of containers shipped by pack, fruit size, grade, and market destination. Handlers submitting the KISS Price/Shipment report will no longer be required to submit the existing shipment report or KISS/Shipment report as that information will be collected on the new KISS Price/Shipment report. However, handlers submitting the KISS Price/Shipment report will still be responsible for filing the KISS/Add Inventory and KISS/Deduct Inventory reports.

The Committee recommended the 100,000 tray threshold because handlers shipping 100,000 trays or more account for approximately 90% of the production area's total shipments in a season. Committee members believe that information on such shipments will provide a sufficiently broad picture of ongoing marketing conditions. Information about the volume of kiwifruit in the current channels of commerce will be compiled by the Committee and reported to the industry. The Committee believes that such information provided throughout the season will benefit the industry as a whole when making marketing decisions.

While information from handlers with total shipments of fewer than 100,000 trays each season might not be significant on a weekly basis, such information will continue to be collected from those handlers on the other existing shipment and KISS

reports and will be used to generate the Committee's marketing policy statements and annual reports.

The previous reporting requirements made no provisions for collecting information on kiwifruit prices. The Committee believes that the industry as a whole will benefit from receiving gross f.o.b. sales information that will be collected by the Committee each week and used to generate timely industry reports. In the past, the Committee has used information from other sources to prepare their mandatory reports and provide updates to the industry, but Committee members feel that information from such sources no longer meets their needs. For example, one voluntary industry organization collects and reports weekly price information from participating handlers. Some industry members have found this information helpful in making marketing decisions in the past. However, Committee members report that the number of participating handlers has declined and that the information collected from the remaining participants may not provide as complete a picture of ongoing marketing conditions as the Committee would like. The Committee believes that compiling sales information from all large-volume kiwifruit handlers in the production area will be more reflective of—and will be of greater benefit to—the industry as a whole.

There can be significant differences in the price of kiwifruit throughout the season, including great fluctuations in prices from week to week. The Committee believes that having accurate and timely sales information will help to reduce these price fluctuations and promote orderly marketing, resulting in increased grower returns.

Under the change, handlers will not be required to report shipments of organically-produced (organic) kiwifruit on the new KISS Price/Shipment report. There are only a small number of handlers who handle organic kiwifruit, representing a small percentage of total shipments. Organic kiwifruit has its own unique marketing conditions with a pricing structure that differs from that of conventionally-produced (conventional) kiwifruit. Therefore, the Committee recommended that shipments of organic kiwifruit should be exempt from the new reporting requirements. However, organic kiwifruit shipments will continue to be reported as required on the appropriate existing Committee forms.

Kiwifruit handlers who ship between 10,000 and 100,000 trays or tray equivalents will continue to report by submitting monthly shipping reports

and the existing KISS forms, including the KISS/Shipment reports. The reporting requirements for handlers shipping fewer than 10,000 tray equivalents will also remain the same. Also, the reporting exemption for minimum quantities of kiwifruit handled under certain conditions specified in § 920.110(b) will remain unchanged.

For the new KISS Price/Shipment report, the shipping week will be defined as Sunday through Saturday. Reports for each shipping week will be due no later than 5:00 p.m. (the close of business) on Tuesday of the following week to insure timely processing of current shipment and price information. Handlers will begin reporting following the first week of the season in which they have shipments. In weeks when no shipments are made, each handler will still be required to file a report indicating that no shipments were made during the reporting period. This will continue until the handler files a final report for the season. The new reporting form will have a space for handlers to indicate when they are filing their final reports of the season. The price data and shipping information received from all affected handlers will be compiled by the Committee and presented to the industry throughout the season in the form of general reports. At the end of each year, the information collected will be summarized and used to prepare the Committee's annual reports and marketing policy statements.

This rule also makes a correction to § 920.160(b). A final rule published in the **Federal Register** on December 10, 1996 [61 FR 64959], made changes to § 920.160(b) and inadvertently removed part of the section. Specifically, the last sentence of § 920.160(b), which specifies the frequency with which the KISS reports shall be filed as well as what information shall be included, was removed. This rule restores the language that was inadvertently removed.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule only changes the reporting requirements under the domestic handling regulations. No changes to the import regulations will be made.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (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 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.

Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on Committee data, there are approximately 30 handlers of kiwifruit subject to regulation under the marketing order and approximately 220 kiwifruit growers in the production area. According to information provided by the Committee, approximately three handlers handle only organic kiwifruit, and four handle both conventional and organic kiwifruit.

The National Agricultural Statistical Service (NASS) reported total California kiwifruit production for the 2008–09 season at 23,000 tons with an average price of \$888 per ton. Based on the average price and shipment information provided by the NASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. In addition, based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, the average annual grower revenue is less than \$750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

This final rule changes the reporting requirements currently prescribed under the order. This rule adds a new reporting requirement and form to the reporting requirements, which will allow the Committee to collect weekly shipment and price information from kiwifruit handlers who ship 100,000 or more trays per season. Handlers will not be required to report information on shipments of organic kiwifruit on this new form but will continue to report shipments of organic kiwifruit on existing Committee forms. This change will help the Committee develop its annual reports and marketing policy statements as required under the order and will enable the Committee to provide timely information to the industry as a whole to assist with

marketing decisions. This rule revises § 920.160, which specifies the reporting requirements. In addition to the new shipping and price information collection, this rule restores a portion of § 920.160(b) that was inadvertently removed from the regulation during a previous rulemaking action. Authority for the collection of shipment and other information is provided in § 920.60 of the order.

Requiring shipment and price reports on a weekly basis will impose an additional reporting burden on handlers who handle 100,000 or more tray equivalents of kiwifruit. However, this data is already being recorded and maintained by most handlers as a routine part of their business. Consequently, any additional costs associated with this change are expected to be minimal. Also, the benefits of having timely information regarding shipments and price are expected to outweigh any costs associated with the increase in reporting burden. While this change will impose an additional reporting burden on those handlers required to submit the KISS Price/Shipment report, those handlers will no longer be required to submit the shipment report or the KISS/Shipment report, which will offset somewhat the increase in burden. Further, the benefits of this rule are expected to be equally available to all industry members, regardless of their size.

The Committee discussed alternatives to this action, including making no changes to the reporting requirements. However, the Committee believes that collecting weekly shipment and price data will provide valuable information to the industry. The Committee also considered using weekly sales information collected by other entities. However, the Committee believes including the information collection under the order's rules and regulations will make the reports they generate more accurate and more reflective of the marketing conditions throughout the industry. Therefore, both alternatives were rejected.

This final rule establishes a new reporting requirement. This action also requires a new Committee form, the KISS Price/Shipment report. Therefore, this final rule will impose an additional reporting burden on handlers who handle 100,000 tray equivalents or more of kiwifruit. The new form has been submitted to the Office of Management and Budget (OMB) under OMB No. 0581-NEW. Upon approval of this new form by OMB, it will be merged with the forms currently approved for use under OMB No. 0581-0189, Generic OMB Fruit Crops.

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

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the September 6, 2007; January 30, 2008; and April 22, 2008; meetings were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on June 4, 2009 (74 FR 26806). A notice of the rule was published in the Committee's electronic newsletter that is distributed to all kiwifruit handlers. Also, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period, ending August 3, 2009, was provided for interested persons to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses. No comments were received.

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/AMSV1/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 matters 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.

It is further found 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 the Committee requires time to prepare and mail

handler report packets, which should include the new KISS Price/Shipment Report form, prior to the beginning of shipments for the 2009–10 crop year. In addition, handlers are aware of this rule, which was recommended at Committee meetings on September 6, 2007; January 30, 2008; and April 22, 2008. Also, a 60-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.160 [Amended]

■ 2. § 920.160 is amended by revising the first sentence of paragraph (a), revising paragraph (b), and adding paragraphs (d) and (e) to read as follows:

§ 920.160 Reports.

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit, except as provided in paragraph (e) of this section, shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the month following such shipment, or such other later time established by the committee: *Provided*, That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year.

* * *

(b) *Kiwifruit Inventory Shipping System (KISS) form*. Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections “KISS/Add Inventory,” “KISS/Deduct Inventory,” and “KISS/Shipment,” on or before November 5th, or such other later time as the committee may establish. Subsequent KISS forms, including all three sections, shall be filed with the committee by the fifth day and again by the twentieth day of each calendar month, or such other later time as the committee may establish, and will contain the following information:

(1) The beginning inventory of the handler by size and container type;

(2) The quantity of fruit the handler lost in repack and repacked into other container types;

(3) The total domestic and export shipments of the handler by size and container type; and

(4) Any other adjustments which increase or decrease posted handler inventory.

* * * * *

(d) *KISS Price/Shipment report.* Each handler who ships 100,000 or more trays, or the equivalent thereof, per season, shall file the KISS Price/Shipment report with the committee. Handlers are not required to report organic kiwifruit shipments on this report. The handler shall file the report weekly following the first week he or she makes shipments and shall continue filing reports until he or she submits a final report for the season. Each such report shall be filed with the committee no later than 5:00 p.m. (the close of business) on the Tuesday immediately following the shipping week. For the purpose of this subsection, the shipping week is defined as Sunday through Saturday. The report shall show:

(1) The company name, contact person, and phone number of the handler;

(2) Weekly period covered by the report;

(3) Total fresh market shipments and gross f.o.b. sales of kiwifruit by pack style and size; and

(4) Total fresh market shipments and gross f.o.b. sales to export markets by pack style and size.

(e) Handlers who file the KISS Price/Shipment report specified in paragraph (d) of this section are exempt from filing the shipping report specified in paragraph (a) of this section and the KISS/Shipment report specified in paragraph (b) of this section.

Dated: September 2, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-21657 Filed 9-8-09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS-FV-09-0048; FV09-993-1 IFR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) for the 2009-10 and subsequent crop years from \$0.30 to \$0.16 per ton of salable dried prunes. The Committee locally administers the marketing order that regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 10, 2009. Comments received by November 9, 2009, 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 to the 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; or Internet: <http://www.regulations.gov>. 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, or can be viewed at: <http://www.regulations.gov>. All 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, or can be viewed at the Web site referenced above.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-

5901, Fax: (559) 487-5906, or e-mail: Debbie.Wray@ams.usda.gov, or Kurt.Kimmel@ams.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@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 110 and Marketing 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."

The Department of Agriculture (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, 2009, and continue until amended, suspended, or terminated.

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. Such 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 decreases the assessment rate established for the Committee for the 2009-10 and subsequent crop years