

and handling costs of \$2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under \$6,500,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule continues in effect the action that suspended the continuing assessment rate established for the Committee and collected from handlers for the 2006–2007 and subsequent fiscal periods. Funds from the Committee's authorized reserve, along with interest and other income, will be adequate to cover budgeted expenses.

As of July 1, 2005, the Committee had \$49,237 in its reserve fund. With the 2006–2007 budget set at \$20,268, the current maximum reserve permitted by the order is approximately \$40,536 (approximately two fiscal periods' expenses (\$ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately \$15,814 from its reserve, and may additionally earn approximately \$4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately \$33,423. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include \$8,610 for salary, \$3,000 for office rent, \$1,750 for office expenses, and \$1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

For the 2005–2006 fiscal period, the Committee recommended a decrease in the assessment rate. However, the decreased assessment rate did not reduce the Committee's reserve as anticipated. Therefore, the Committee recommended suspending the continuing assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were considered, but not recommended because they would not reduce the reserve as quickly as suspension of the continuing assessment rate.

This action continues in effect the action that suspended the assessment obligation imposed on handlers.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, suspending the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 11, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on the issues.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado potato 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.

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.

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

An interim final rule concerning this action was published in the **Federal Register** on July 18, 2006 (71 FR 40639). Copies of that rule were also mailed or sent via facsimile to all Area No. 3 Colorado potato handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 18, 2006, and 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.ama.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 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.

#### List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

#### PART 948—IRISH POTATOES GROWN IN COLORADO

■ Accordingly, the interim final rule amending 7 CFR part 948 which was published at 71 FR 40639 on July 18, 2006, is adopted as a final rule without change.

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–19464 Filed 11–16–06; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV06–993–1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2006–07 and subsequent crop years from \$0.65 to \$0.40 per ton of salable dried prunes. The committee locally administers the marketing order which regulates the handling of dried prunes produced 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 Date:* November 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, Terry Vawter, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax (559) 487–5906, or E-mail: [Toni.Sasselli@usda.gov](mailto:Toni.Sasselli@usda.gov), [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov), or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@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@usda.gov](mailto:Jay.Guerber@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 August 1, 2006, and continue 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 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 2006-07 and subsequent crop years from \$0.65 to \$0.40 per ton of salable dried prunes handled.

The California dried prune marketing order provides authority for the committee, with the approval of USDA, 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 at least one public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005-06 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 29, 2006, and unanimously recommended a decreased assessment rate of \$0.40 per ton of salable dried prunes and expenditures totaling \$77,215 for the 2006-07 crop year. In comparison, last year's approved expenditures were \$89,090. The \$0.40 per ton assessment rate is \$0.25 lower than the 2005-06 rate.

The committee recommended a lower assessment rate based on an estimated production of 145,000 tons of salable dried prunes. At the decreased assessment rate, the assessment income for the 2006-07 crop year should be \$58,000. The committee has \$19,215 of excess assessment income available and those funds plus assessment income should be adequate to cover its estimated expenses of \$77,215.

The major expenditures recommended by the committee for the 2006-07 crop year include \$48,405 for personnel salaries, \$15,645 for operating expenses, and \$13,165 for contingencies. For the 2005-06 crop year, the committee's budgeted expenses for these items were \$45,945, \$16,755, and \$26,390, respectively.

The assessment rate recommended by the committee was derived by dividing the handler assessment revenue needed to meet expenses by the estimated salable tons of California dried prunes. Dried prune production for the year is estimated to be 145,000 salable tons, which should provide \$58,000 in assessment income. Income derived from handler assessments plus excess funds from the 2005-06 crop year

should be adequate to cover budgeted expenses.

The committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2005-06 crop year (estimated at \$19,215) for up to 5 months beyond the end of the crop year to meet 2006-07 crop year expenses. At the end of the 5 months, the committee must either refund or credit excess funds to handlers.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2006-07 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

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 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 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 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than \$750,000, and small agricultural service

firms as those whose annual receipts are less than \$6,500,000.

An estimated 1,068 of the 1,100 producers (97.1 percent) have incomes of less than \$750,000 and would be considered small producers. Fourteen of the 22 handlers (63.6 percent) have incomes from handling prunes of less than \$6,500,000 and could be considered small handlers. Therefore, the majority of handlers and producers of California dried prunes may be classified as small entities.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2006–07 and subsequent crop years from \$0.65 to \$0.40 per ton of salable dried prunes.

The committee met on June 29, 2006, and unanimously recommended a 2006–07 total budget of \$77,215 and a decreased assessment rate of \$0.40 per ton of salable dried prunes. The recommended budget of \$77,215 for the 2006–07 crop year is smaller than the budgets in previous crop years. The \$0.40 per ton assessment rate is \$0.25 lower than the 2005–06 rate. The quantity of salable dried prunes for the 2006–07 crop year is estimated at 145,000 tons, compared to 94,402 tons for the 2005–06 crop year.

Prior to arriving at its budget of \$77,215, the committee considered information from various sources, including the committee's Executive Subcommittee. Alternative assessment rates, including the rate currently in effect, and different expenditure levels were discussed by the subcommittee and the committee. An alternative to this action would be to continue with the \$0.65 per ton assessment rate. However, an assessment rate of \$0.40 per ton of salable dried prunes and excess funds from the 2005–06 crop year will provide enough income to fund the committee's operations.

Therefore, the committee agreed that \$0.40 per ton of salable dried prunes is an acceptable assessment rate. Section 993.81(c) of the order provides the committee the authority to use excess assessment funds from the 2005–06 crop year (estimated at \$19,215) for up to 5 months beyond the end of the crop year to meet 2005–06 crop year expenses. At the end of the 5 months, the committee must either refund or credit excess funds to handlers.

A review of historical information and preliminary data pertaining to the 2006–07 crop year indicates that the producer price for the 2006–07 crop year is expected to average between \$1,500 and

\$1,600 per ton of salable dried prunes. Based on an estimated 145,000 salable tons of dried prunes, assessment revenue as a percentage of producer revenue during the 2006–07 crop year is expected to be between .025 and .027 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 29, 2006, meeting was public and all entities, both large and small, were encouraged to express views on this issue.

This rule imposes no 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 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.

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

A proposed rule concerning this action was published in the **Federal Register** on September 22, 2006. Copies of the proposed rule were also mailed or sent via facsimile to all dried prune handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending October 23, 2006, was provided for interested persons to respond to the proposal. One comment was received. The commenter was of the view that the rule was confusing. We disagree. This action is similar to previous actions published in the **Federal Register** concerning assessments on handlers under marketing order programs. Accordingly, no changes will be made to the proposed rule based on the comment 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/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 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the crop year began on August 1, 2006, and handlers are already receiving 2006–07 crop dried prunes from growers. The decreased assessment rate applies to all dried prunes received during the 2006–07 year and subsequent seasons, and this action reduces the assessment rate. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### 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. Section 993.347 is revised to read as follows:

#### § 993.347 Assessment rate.

On and after August 1, 2006, an assessment rate of \$0.40 per ton of salable dried prunes is established for California dried prunes.

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–19463 Filed 11–16–06; 8:45 am]

**BILLING CODE 3410–02–P**