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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV97-993-1 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased 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 grown in California. Authorization to assess dried 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.

**EFFECTIVE DATE:** October 24, 1997.

#### 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, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, 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, P.O. 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 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 is issuing this rule in conformance with Executive Order 12866.

This final rule was 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 be applicable to all assessable dried 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 continues in effect the assessment rate of \$1.60 per salable ton

of dried prunes established for the Committee for the 1997-98 and subsequent crop years. The assessment rate had been \$1.50 per ton of salable 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 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; and the assessment rate was \$1.50 per salable ton. The 1997-98 crop year assessment rate is increased \$0.10. The primary reason for the higher budget is a comprehensive acreage survey of all California's producing counties. This acreage survey will help the industry estimate dried prune production and fulfill marketing plans.

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 major 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 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 the Department. 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 was approved by the Department on August 4, 1997, and those for subsequent crop years will be reviewed each year 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 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 1,400 producers of dried prunes in California 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.

Currently, as a percentage, about 34 percent of the handlers shipped over \$5,000,000 worth of dried prunes and 66 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 continues the assessment rate of \$1.60 per salable ton for the 1997–98 and subsequent crop years. 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 1996–97 rate. The Committee estimated assessable dried prunes in 1997–98 at 207,475 salable tons. Thus, the prior crop year assessment rate of \$1.50 would only have provided \$311,212 in revenue, which would not have been 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 will provide wage and benefit increases for the staff. The increase in acreage survey will allow the Committee to conduct a more comprehensive dried prune acreage survey than 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. The Committee feels that all of the expense levels are appropriate and reasonable.

Recent price information indicates that the grower price for the 1997–98 season should average \$800 per salable ton of dried prunes. Based on estimated shipments of 207,475 salable tons, the estimated assessment revenue for the 1997–98 crop year is less than 1 percent of the total expected grower revenue.

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.

While this rule imposes 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.

This rule does 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 final rule.

An interim final rule concerning this action was issued by the Department on July 29, 1997, put on display at the Office of the Federal Register on August 3, 1997, and published in the **Federal Register** on August 4, 1997 (62 FR 41808). Copies of the rule were mailed or sent via facsimile to all Committee members and dried prune handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided. No comments on the interim rule were received.

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 993

Dried prunes, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 993 which was published at 62 FR 41808 on August 4, 1997, is adopted as a final rule without change.

Dated: September 17, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-25275 Filed 9-23-97; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Rural Housing and Community Development Service

##### Rural Business and Cooperative Development Service

##### Rural Utilities Service

##### Consolidated Farm Service Agency

#### 7 CFR Part 1924

##### Construction and Repair

##### *CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 1900 to 1939, revised as of January 1, 1997, make the following correction:

1. On page 97, in § 1924.5(h), in the fourth line, "103-354ing" should read "103-354, prior to beginning".

BILLING CODE 1505-01-D

#### FARM CREDIT ADMINISTRATION

#### 12 CFR Part 615

#### RIN 3052-AB75

##### Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Cumulative Voting

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA), through the FCA Board (Board), issues a final rule amending § 615.5230 of its regulations to provide that a Farm Credit Bank (FCB or bank) may eliminate cumulative

voting in director elections with the consent of 75 percent of the bank's association shareholders. This rule is necessary because the existing requirement of unanimous consent was unduly burdensome, complicated, and provided questionable benefits. The effect of this rule is to ease the unanimous consent requirement while maintaining significant protection for the minority interests.

**DATES:** This regulation shall become effective October 24, 1997, during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Gaylon J. Dykstra, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** The FCA proposed to amend § 615.5230 of its regulations on April 25, 1997 (62 FR 20131), to provide that an FCB may eliminate the cumulative voting requirement for the election of directors by a vote of 75 percent of the bank's association shareholders.<sup>1</sup> The proposed rule was in response to petitions from several Farm Credit System (System) institutions requesting that the FCA revise the existing unanimous consent requirement for eliminating cumulative voting. The 30-day comment period expired on May 27, 1997.

The FCA received a total of eight comment letters. Five of the letters represented seven associations (some commented jointly). The other three were from the FCB of Wichita (transmitting comments of 10 of its affiliated associations); the FCB of Texas; and the Tenth District Federation of Production Credit Associations (Federation), whose members are affiliated with the FCB of Texas.

Nine associations and the Federation supported the proposed amendment; seven associations opposed the proposed amendment. One association requested that the FCA reconsider the recommendation of a two-thirds majority made by several petitioners but

supported the proposed amendment if the FCA could not support the two-thirds majority. The FCB of Texas stated that it believed that a simple majority vote of all associations should control cumulative voting, but that alternatively, the supermajority requirement should be based on the number of associations that actually vote. Two institutions specifically endorsed the proposal to accord each association one vote in a vote to eliminate cumulative voting.

The associations that supported the proposed amendment generally commented that the existing regulation was unduly burdensome, complicated, and provided questionable benefits. One commenter stated that the current regulation "allows only one vote to void the wishes of the remainder of the District who support a less restrictive consent for change."

Four associations that opposed the proposed amendment supported the continuation of the existing regulation. They commented that the original intent of the regulation was to provide smaller associations a meaningful vote by allowing them to cumulate their votes in elections and that this is now even more paramount because of the mergers, consolidations, and proposed joint management agreements at the district level. They further stated that it was important for all stockholders in the district banks to have the maximum opportunity to voice their respective votes and that there was "no valid reason for an association located in a smaller geographic size to forfeit this right."

After careful consideration of the comments, the FCA adopts the rule as proposed. The FCA continues to believe that cumulative voting provides important protection to minority interests and, consequently, should not be subject to elimination by a two-thirds majority. The 75-percent supermajority provides the proper balance among the differing opinions by easing the unanimous requirement for eliminating cumulative voting while maintaining significant protection for the minority interests.

As noted above, one commenter stated that a supermajority requirement should be a percentage of only the shareholders that participate in the vote, rather than the total number of voting shareholders. The effect of such a change would be the possibility that a smaller number of shareholders would be able to eliminate cumulative voting if some shareholders abstain. The FCA is not persuaded that such a change is appropriate.

<sup>1</sup> Farm Credit System associations that are shareholders of an FCB include Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.