

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to change two citations to Office of Personnel Management regulations and to replace the MSPB Appeal Form contained in Appendix I with the latest version of this form. The Board also provides notice to Federal agencies that bulk supplies of the MSPB Appeal Form may be ordered directly from the Board.

**EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653-7200.

**SUPPLEMENTARY INFORMATION:** The Board is amending its rules of practice and procedure at 5 CFR 1201.3(a)(6) and 5 CFR 1201.3(a)(7) to change citations to regulations of the Office of Personnel Management (OPM). The Board is also amending Appendix I to 5 CFR part 1201 to replace the MSPB Appeal Form with the latest version of this form and is providing notice to Federal agencies that bulk supplies of the MSPB Appeal Form may be ordered directly from the Board.

On March 19, 2001, OPM published an interim rule to implement the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), enacted as Title II of Public Law 106-265 on September 19, 2000 (66 FR 15605). The rule consists of revisions to regulations contained in 5 CFR parts 831, 841 and

846, and the addition of a new part 839, "Correction of Retirement Coverage Errors under the Federal Erroneous Retirement Coverage Corrections Act." Subpart M—Appeal Rights—of the new 5 CFR part 839 includes provisions on appeals to the Board. The Board's regulation at 5 CFR 1201.3(a)(6) provides notice that determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees Retirement System may be appealed to the Board. The regulation includes citations to both the statutory provisions that make such determinations appealable and to the applicable OPM regulations. In order to conform its regulations to the revised OPM regulations, therefore, the Board is amending its regulation at 5 CFR 1201.3(a)(6) to include the appropriate citations to FERCCA and the new 5 CFR part 839. The Board is also adding a citation to 5 CFR part 846, "Federal Employees Retirement System—Elections of Coverage." This part, which governs earlier elections to transfer to FERS, also includes provisions on appeals to the Board.

On December 28, 2000, OPM published revisions to its regulations at 5 CFR part 731, "Suitability," with an effective date of January 29, 2001 (65 FR 82239). Subsequently, OPM deferred the effective date of these regulations until March 30, 2001 (66 FR 7863, January 26, 2001). The revised OPM regulations at § 731.501 provide notice of the right to appeal a suitability determination to the Board. Prior to this revision, there were two separate provisions providing notice of an appeal right to MSPB—§ 731.103(d) for suitability determinations made by an agency under authority delegated by OPM and § 731.501 for suitability determinations made by OPM—and the Board included a citation to both of these provisions in its regulation at 5 CFR 1201.3(a)(7). In order to conform its regulations to the revised OPM regulations, therefore, the Board is amending its regulation at 5 CFR 1201.3(a)(7) to update the citation.

Prior to reprinting the MSPB Appeal Form, which is published as Appendix I to 5 CFR part 1201, the Board updated the "Instructions" to reflect several changes in law and the Board's

regulations since the form was last reprinted in 1994. The current version of the form is Optional Form 283 (Rev. 11/00). Accordingly, the Board is amending 5 CFR part 1201 at Appendix I to replace the 10/94 edition of the form with the current version.

The Board is also taking this opportunity to provide notice to Federal agencies that bulk orders for the MSPB Appeal Form may be directed to MSPB by e-mail to [APPEALFORM@mspb.gov](mailto:APPEALFORM@mspb.gov), by facsimile to 202-653-7821, or by telephone to Richard Dorr, 202-653-6772, extension 1113. The Appeal Form is also available for downloading and printing from the MSPB website, [www.mspb.gov](http://www.mspb.gov). The form is a portable document format (PDF) file, and the Adobe Acrobat Reader is required.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

#### PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

##### § 1201.3 [Amended]

2. Amend 5 CFR 1201.3 at paragraph (a)(6) by removing the citation "(5 CFR parts 831, 842, and 844; 5 U.S.C. 8347(d)(1)–(2) and 8461(e)(1))" and by adding in its place "(5 CFR parts 831, 839, 842, 844, and 846; 5 U.S.C. 8347(d)(1)–(2) and 8461(e)(1); and 5 U.S.C. 8331 note, Federal Erroneous Retirement Coverage Corrections Act)".

3. Amend 5 CFR 1201.3 at paragraph (a)(7) by removing the citation "(5 CFR 731.103(d) and 731.501)" and by adding in its place "(5 CFR 731.501)".

4. Revise Appendix I to part 1201 to read as follows:

#### Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

BILLING CODE 7400-01-U

## MERIT SYSTEMS PROTECTION BOARD



## APPEAL FORM

## INSTRUCTIONS

**GENERAL:** You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. See **5 C.F.R. Parts 1201, 1208, and 1209**. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. Complete **Parts I, II, III and V** of this form **regardless of the kind of action** you are appealing. Complete **Part VI** only if you are appealing an action resulting from a **reduction in force**. You must tell the Board if you are raising an **affirmative defense** (see **Part IV**), and **you are responsible for proving each defense you raise**. If you believe the action you are appealing was threatened, proposed, taken, or not taken because of **whistleblowing activities**, you must complete **Part VII**. If you are requesting a stay, you must complete **Part VIII**. If you claim a violation of your rights under the **Uniformed Services Employment and Reemployment Rights Act (USERRA)** or the **Veterans Employment Opportunities Act (VEOA)**, you must provide the information required by the Board's regulations at **5 C.F.R. 1208.13 (for USERRA appeals)** or **5 C.F.R. 1208.23 (for VEOA appeals)**. You may use a separate sheet of paper (please put your name and address at the top of each additional page) or you may include the information in block 31 of Part IV.


**WHERE TO FILE AN APPEAL:** You must file your appeal with the Board's regional or field office which has responsibility for the geographic area where your duty station was located when the agency took the action or, if you are appealing a retirement or suitability decision, the geographic area where you live. See **5 C.F.R. Part 1201, Appendix II, and 5 C.F.R. 1201.4(d)**.

**WHEN TO FILE AN APPEAL:** Unless your appeal is covered by a law that sets a different filing time limit, your appeal must be filed during the period **beginning with the day after the effective date**, if any, of the action you are appealing and ending on the **30th day**

**after the effective date, or within 30 days after the date you receive the agency's decision, whichever is later**. However, if you and the agency mutually agree in writing to try to resolve your dispute through an **alternative dispute resolution process** before you file an appeal, you have an additional 30 days—for a total of **60 days**—to file your appeal. You may not file your appeal before the effective date of the action you are appealing. If your appeal is late, it may be dismissed as untimely. If you are filing a **USERRA appeal**, there is **no time limit** for filing (see **5 CFR 1208.12**). You may not file a **VEOA appeal** with the Board unless you first filed a complaint with the Secretary of Labor and allowed the Secretary at least 60 days to try to resolve the matter; any subsequent appeal to the Board must be filed within **15 days** of the date you receive notice that the Secretary has been unable to resolve the matter (see **5 C.F.R. 1208.22**). If you are filing a **whistleblower appeal** after first filing a complaint with the Office of Special Counsel (OSC), your appeal must be filed within **65 days** of the date of the OSC notice advising you that the Special Counsel will not seek corrective action or within **60 days** after the date you receive the OSC notice, whichever is later (see **5 C.F.R. 1209.5**). The date of filing is the date your appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, or the date of receipt if you personally deliver it to the regional or field office.

**HOW TO FILE AN APPEAL:** You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. You must submit **two copies** of both your appeal and all attachments. You may supplement your response to any question on separate sheets of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on **8 1/2" x 11" paper**. **Your appeal must contain your or your representative's signature in block 6**. If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 11 or submit a separate written designation of representative.

## Part I Appellant Identification

1. Name ( <i>last, first, middle initial</i> )	2. Social Security Number
3. Present address ( <i>number and street, city, state, and ZIP code</i> ) You must notify the Board of any change of address or telephone number while the appeal is pending with MSPB.	4. Home phone ( <i>include area code</i> )
	5. Office phone ( <i>include area code</i> )
6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief.	<div style="display: flex; align-items: center;"> <div style="flex: 1;">  </div> <div style="flex: 2;"> Signature of appellant or designated representative </div> <div style="flex: 1;"> Date signed </div> </div>

**Part II Designation of Representative**

7. You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, if you so desire, but **you must notify the Board promptly of any change.** Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 7 through 11.

"I hereby designate \_\_\_\_\_ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any limitation on this settlement authority must be filed in writing with the Board."

8. Representative's address (number and street, city, state, and ZIP code).

9. Representative's employer

10.a) Representative's telephone number (include area code)

10.b) Representative's facsimile number

11. Appellant's signature

Date

**Part III Appealed Action**

12. Briefly describe the **agency action** you wish to appeal and attach the proposal letter and decision letter. If you are appealing a decision relating to the denial of retirement benefits, attach a copy of OPM's **reconsideration decision**. If the relevant SF-50 or its equivalent is available, send it now; however, do NOT delay filing your appeal because of it. You may submit the SF-50 when it becomes available. Later in the proceeding, you will be afforded an opportunity to submit detailed evidence in support of your appeal.

13. Name and address of the agency that took the action you are appealing (including bureau or other divisions, as well as street address, city, state and ZIP code)

14. Your position title and duty station at the time of the action appealed

15. Grade at time of the action appealed

16. Salary at the time of the action appealed

\$ \_\_\_\_\_ per

17. Are you a veteran and/or entitled to the employment rights of a veteran?

☐ Yes ☐ No

18. Employment status at the time of the action appealed

☐ Temporary ☐ Applicant ☐ Retired

☐ Permanent ☐ Term ☐ Seasonal

19. If retired, date of retirement (month, day, year)

20. Type of service

☐ Competitive ☐ SES  
☐ Excepted ☐ Postal Service  
☐ Foreign Service

21. Length of government service

22. Length of service with acting agency

23. Were you serving a probationary or trial period at the time of the action appealed?

☐ Yes ☐ No

24. Date you received written notice of the proposed action (month, day, year) (attach a copy)

25. Date you received the final decision notice (month, day, year) (attach a copy)

26. Effective date of the action appealed (month, day, year)

27. Explain briefly why you think the agency was wrong in taking this action.	
28. Do you believe the penalty imposed by the agency was too harsh?  <input type="checkbox"/> Yes <input type="checkbox"/> No	29. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?
<b>Part IV Appellant's Defenses</b>	
30.a) Do you believe the agency committed harmful procedural error(s)?  <input type="checkbox"/> Yes <input type="checkbox"/> No	30.b) If so, what is (are) the error(s)?
30.c) Explain how you were harmed by the error(s).	
<b>Block 31 - Violations of Law:</b> If you use this block to claim a violation of your rights under USERRA or VEOA, you must include the information required by the Board's regulations at 5 C.F.R. 1208.13 (for USERRA appeals) or 5 C.F.R. 1208.23 (for VEOA appeals). <b>DO NOT</b> use this block to claim a violation of the Whistleblower Protection Act; instead, complete Part VII and, if you are also requesting a stay, Part VIII.	
31.a) Do you believe that the action you are appealing violated the law?  <input type="checkbox"/> Yes <input type="checkbox"/> No	31.b) If so, what law?
31.c) How was it violated?	
32.a) If you believe you were discriminated against by the agency, <b>in connection with the matter appealed</b> , because of your race, color, religion, sex, national origin, marital status, political affiliation, disability, or age, indicate so and explain why you believe it to be true.	
32.b) Have you filed a <b>formal</b> discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal? <span style="float: right;"> <input type="checkbox"/> Yes (attach a copy)    <input type="checkbox"/> No         </span>	
32.c) If yes, place filed (agency, number and street, city, state, and ZIP code)	32.d) Date filed (month, day, year)
32.e) Has a decision been issued? <div style="text-align: right;"> <input type="checkbox"/> Yes (attach a copy)    <input type="checkbox"/> No         </div>	

33.a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement?  <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No	33.b) Date filed (month, day, year)	
33.c) If yes, place filed (agency, number and street, city, state, and ZIP code)	33.d) Has a decision been issued?  <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No	
	33.e) If yes, date issued (month, day, year)	
<b>Part V Hearing</b>		
34. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents.  Do you want a hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No  If you choose to have a hearing, the Board will notify you where and when it is to be held.		
<b>Part VI Reduction In Force</b>		
<b>INSTRUCTIONS</b>		
Fill out this part only if you are appealing from a Reduction in Force. Your agency's personnel office can furnish you with most of the information requested below.		
35. Retention group and sub-group	36. Service computation date	37.a) Has your agency offered you another position rather than separating you?  <input type="checkbox"/> Yes <input type="checkbox"/> No
37.b) Title of position offered	37.c) Grade of position offered	37.d) Salary of position offered  \$                      per
37.e) Location of position offered		37.f) Did you accept this position?  <input type="checkbox"/> Yes <input type="checkbox"/> No
38. Explain why you think you should not have been affected by the Reduction In Force. (Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; the required number of days notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)		

**Part VII Whistleblowing Activity****INSTRUCTIONS**

Complete Parts VII and VIII of this form only if you believe the action you are appealing is based on whistleblowing activities. If you filed a complaint with the Office of Special Counsel (OSC) using Form OSC-11 (8/00) before filing this appeal, you may attach a copy of Part 2, Reprisal for Whistleblowing, of the OSC form together with any continuation sheet or supplement filed with OSC. This will give the Board the information requested in blocks 39(a) through (c) below. Please complete the other blocks in this part even if you attach Form OSC-11.

39.a) Have you disclosed information that evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety?

☐ Yes (attach a copy or summary of disclosure) ☐ No

39.b) If yes, provide the name, title, and office address of the person to whom the disclosure was made

39.c) Date the disclosure was made (month, day, year)

40. If you believe the action you are appealing was... (please check appropriate box)

☐ Threatened

☐ Proposed

☐ Taken

☐ Not Taken

...because of a disclosure evidencing a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, provide:

a) a chronology of facts concerning the action appealed; and

b) explain why you believe the action was based on whistleblowing activity and attach a copy of any documentary evidence

41. a) Have you sought corrective action from the Office of Special Counsel concerning the action which you are appealing?

☐ Yes (attach a copy of your request to the Office of Special Counsel for corrective action) ☐ No

41.b) If yes, date(s) filed (month, day, year)

41. c) Place filed (location, number and street, city, state, and ZIP code)

42. Have you received a written notice of your right to file this appeal from the Office of Special Counsel?

☐ Yes (attach a copy) ☐ No

43.a) Have you already requested a stay from the Board of the action you are seeking to appeal?

☐ Yes (attach a copy) ☐ No

43.b) If yes, date requested (month, day, year)

43.c) Place filed (location, number and street, city, state, and ZIP code)

43.d) Has there been a decision?

☐ Yes (attach a copy) ☐ No

### Part VIII Stay Request

#### INSTRUCTIONS

You may request a stay of a personnel action allegedly based on whistleblowing at any time after you become eligible to file an appeal with the Board under 5 C.F.R. 1209.5, but no later than the time limit set for the close of discovery in the appeal. The stay request may be filed prior to, simultaneous with, or after the filing of an appeal. When you file a stay request with the Board, you must

simultaneously serve it upon the agency's local servicing personnel office or the agency's designated representative. 5 C.F.R. 1209.8.

If your stay request is being filed prior to filing an appeal with the Board, you must complete Parts I and II and items 41 through 43 above.

44. On separate sheets of paper, please provide the following. Please put your name and address at the top of each page.

a. A chronology of facts, including a description of the disclosure and the action taken by the agency (unless you have already supplied this information in Part VII above).

c. Evidence and/or argument demonstrating that there is a substantial likelihood that you will prevail on the merits of your appeal of the personnel action.

b. Evidence and/or argument demonstrating that the:

d. Documentary evidence that supports your stay request.

(1) action threatened, proposed, taken, or not taken is a personnel action, as defined in 5 C.F.R. 1209.4(a); and

e. Evidence and/or argument addressing how long the stay should remain in effect.

(2) action complained of was based on whistleblowing, as defined in 5 C.F.R. 1209.4(b) (unless you have already supplied this information in Part VII above).

f. Certificate of service specifying how and when the stay request was served on the agency.

g. You may provide evidence and/or argument concerning whether a stay would impose extreme hardship on the agency.

**Privacy Act Statement:** This form requests personal information which is relevant and necessary to reach a decision in your appeal. The Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.

You should know that the decisions of the Merit Systems Protection

Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to vary from 20 minutes to 1 hour, with an average of 30 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

Dated: June 4, 2001.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 01-14388 Filed 6-6-01; 8:45 am]

BILLING CODE 7400-01-C

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV01-993-1 FR]

#### Dried Prunes Produced in California; Undersized Regulation for the 2001-02 Crop Year

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2001-02 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allows handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes by approximately 3,400 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

**EFFECTIVE DATE:** August 1, 2001 through July 31, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202)

720-8938, or E-mail:

Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The 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. A 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 final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2001-02 crop year for supply management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from  $2\frac{4}{32}$  to  $2\frac{4}{32}$  of an inch in diameter; and for non-French prunes, the opening will be increased from  $2\frac{8}{32}$  to  $3\frac{0}{32}$  of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 2001, through July 31, 2002, and was unanimously recommended by the Committee at a November 29, 2000, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. \* \* \* Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary on the basis of a recommendation of the Committee or other information."

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit undersized regulations using openings of  $2\frac{3}{32}$  or  $2\frac{4}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  or  $3\frac{0}{32}$  of an inch for non-French prunes.

During the 1974-75 and 1977-78 crop years, the undersized prune regulation was established by the Department at  $2\frac{3}{32}$  of an inch in diameter for French prunes and  $2\frac{8}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974-75 crop year with an undersized regulation at the aforementioned  $2\frac{3}{32}$  and  $2\frac{8}{32}$  inch diameter screen sizes. During the 1975-76 and 1976-77 crop years, the undersized prune regulation was established at  $2\frac{4}{32}$  of an inch for French prunes and  $3\frac{0}{32}$  of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975-76, 1976-77, and 1977-78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable