

interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado 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.

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 March 15, 2002 (67 FR 11614). Copies of the proposed rule were also mailed or sent via facsimile to all avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending April 15, 2002, was provided for interested persons to respond to the proposal. 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/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 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 handlers are already receiving 2002–03 crop avocados from growers. Moreover, the crop year began on April 1, 2002, and the assessment rate applies to all avocados handled during the 2002–03 and subsequent seasons. Further, the Committee needs sufficient funds to pay its expenses, and handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

## List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

### PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

#### § 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of \$0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: May 3, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–11676 Filed 5–9–02; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV02–993–1 FR]

#### Dried Prunes Produced in California; Undersized Regulation for the 2002–03 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 2002–03 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 3,800 tons while leaving sufficient prunes to fill foreign and domestic trade demand.

**EFFECTIVE DATE:** August 1, 2002. This final rule applies to undersized dried prunes received by handlers during the

2002–03 crop year until the prunes are disposed of as required under the marketing order.

#### 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, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; 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, 1400 Independence Avenue, SW STOP 0237, 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 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 (USDA) 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 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 changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2002–03 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from  $2\frac{3}{32}$  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. This rule will be in effect from August 1, 2002, through July 31, 2003, and was unanimously recommended by the Committee at a November 29, 2001, meeting.

#### **Authority for Undersized Regulations as a Volume Control**

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 USDA 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 USDA 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.

#### **History of Undersized Regulations Used as a Volume Control**

During the 1974–75 and 1977–78 crop years, USDA established the undersized prune regulation 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 USDA 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 to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes. During the 1998–99 crop year, an 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 § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons,

the Committee unanimously recommended continuing with an undersized prune regulation at  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000, or until the undersized prunes from that crop were disposed of as required. Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001, or until the undersized prunes were properly disposed of as required. Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002, or until the undersize prunes are disposed of under the marketing order.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop size of about 178,000 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop increased to 100,829 natural condition tons. This increase was due to a larger crop size of about 219,000 natural condition tons and a modest increase in shipments from a severely reduced shipment base during the 2001–02 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full

while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year, while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2001, the Committee unanimously recommended continuing an undersized prune regulation at  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes during the 2002–03 crop year for supply management purposes. This regulation will be in effect from August 1, 2002, through July 31, 2003, or until the undersized prunes from 2002–03 are properly disposed of as required under the marketing order.

The Committee estimated that there will be an excess of about 15,422 natural condition tons of dried prunes as of July 31, 2002. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulations that were implemented for the 1998–99, 1999–2000, 2000–01, and 2001–02 crop years. It is estimated that approximately 3,800 natural condition tons of small prunes will be removed from human consumption channels during the 2002–03 crop year as a result of this rule. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2002–03 crop year, and provide an adequate carryout on July 31, 2003, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2002–03 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 317,628 natural condition tons by the year 2006); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) extremely low producer prices. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it

has to continue utilizing all available supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. To facilitate this management, the Committee has also supported other efforts to reduce burdensome supplies, including an industry-funded tree removal program that was initiated in the fall of 2001. Through this program, about 3,500 bearing acres of prune plum trees were removed. The Committee also recommended removal of prune plum trees through a USDA funded program, wherein growers would be encouraged to remove up to 20,000 bearing acres of prune plum trees. The final rule was published in the March 14, 2002, **Federal Register** (67 FR 11384). The changes to the undersized regulation for the 2002–03 crop year and the expected removal of prune plum trees are intended to bring supplies in line with market needs.

Despite these supply management efforts, the industry's oversupply situation may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 15,000 acres during the 2000–01 crop year. The 1996–97 through 2000–01 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10-years, the average was 2.1 tons per acre.

The 2001–02 dried prune crop is expected to be 141,000 natural condition tons. Another large crop as high as 200,000 natural condition tons is expected for the 2002–03 crop year, partly because of an anticipated increase in new bearing acreage coming into production and high yields.

The 1997–98 crop year producer prices for the 24/size French prunes have been about \$40–\$50 per ton, about \$260–\$270 per ton below the cost of production. During the 2001–02 crop year, feedlot prices are expected to be about \$20 to \$40 per ton for the  $2\frac{4}{32}$  size French prunes, which is about \$270–290 per ton below the cost of production. The lower producer prices are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this final rule is to eliminate small sizes that have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average producer

returns currently are below the cost of production and the final rule is expected to assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, and 2001–02 undersized prune rules of  $2\frac{4}{32}$  of an inch for French prunes and  $3\frac{0}{32}$  of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2001, was 100,829 natural condition tons, and only about 3,800 natural condition tons of dried prunes are expected to be removed from the 2001–02 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2002–03 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2002–03 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the  $2\frac{3}{32}$  and  $2\frac{8}{32}$  inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. Congress intended marketing orders to foster income equity for agricultural producers with non-agricultural producers, and used parity as a means of comparison. Parity compares agricultural producer prices against those for non-agricultural producers during the early 1900's, when incomes for agricultural and non-agricultural producers were generally thought to be fair. It further states that any change (i.e. increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2002–03 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced

commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because this action is for inventory management, not quality control. The smaller diameter openings of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes were implemented to improve product quality. The increases to  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

### 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 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under \$5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, could be considered large growers with annual incomes over \$750,000. The majority of handlers and producers of

California dried prunes may be classified as small entities.

As recommended by the Committee, this final rule will establish an undersized prune regulation of  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes for the 2002–03 crop year for inventory management. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2001–02 are the same as those for 2002–03 and are expected to remove only 3,806 tons of dried prunes from the excess marketable supply. Implementation of the larger openings in 2002–03 is expected to remove approximately 3,800 tons from the marketable production.

The Committee estimates carryout inventories at July 31, 2002, to be 56,195 tons. This is 15,422 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, grower prices are reported at an average of \$763 per ton for the 2001–02 crop year. This compares to \$845 per ton for the 2000–01 season, or a decrease of 9.7 percent. The \$763 average grower price is substantially below the total cost of production of \$1,724 per ton and the total variable cost of production of \$985 estimated for 2001–2002, meaning that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels above the total cost of production.

A tree removal program funded by the industry and a USDA-funded program are in various stages of implementation. If these programs are successful in removing 20,000 bearing acres from production, marketable production will be reduced. Even with these tree removal programs, total available supply is estimated at 242,195 tons for the 2002–03 crop year (marketable production estimated at 186,000 tons and 56,195 tons of carryin inventories). Total demand is estimated at 167,591 tons, resulting in carryout inventories of 74,604 tons. With this large estimated crop size, inventories will increase and remain in excess of desirable inventories of 40,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of

maintaining these inventories are deducted from grower payments.

An undersized prune regulation for 2002–03 will result in an additional 3,800 tons being removed from the total available supply. An econometric model shows that an undersized prune regulation resulting in eliminating 3,800 tons from marketable production will strengthen growers' prices modestly by \$11 per ton. This price is still expected to be less than the cost of production for 2002–2003 estimated at \$1,032 per ton.

Because the benefits and costs of the action will be directly proportional to the quantity of  $2\frac{4}{32}$  screen French prunes and  $3\frac{0}{32}$  screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 3,800 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2001, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers losing about \$270–\$290 on every ton of small-sized prunes delivered to handlers. During the 2002–03 crop year, the feedlot prices for  $2\frac{4}{32}$  screen French prunes are expected to be about \$20 to \$40 per ton. This price is similar to the \$20–\$40 price received

during the 2001–02 crop year. The cost of drying a ton of such prunes is \$260 per ton at a 4 to 1 dry-away ratio, transportation is at least \$20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is \$30 per ton for a total cost of about \$310 per ton. This equates to a loss of about \$270–\$290 per ton for every ton of  $2\frac{4}{32}$  screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, USDA has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 3,800 tons of small-sized dried prunes during the 2002–03 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 100,829 tons of natural condition prunes on July 31, 2001, the end of the 2000–01 crop year. The 100,829 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2001–02 inventory surplus of about 60,000 tons. The undersized regulation will help reduce the surplus, but the anticipated large 2002–03 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this rule, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of \$1,140 per ton to a low of \$764 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season

average producer price for 2001–02 season is expected to be about the same as the 2000–01 season average producer price of \$809 per ton, or about 36 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. The Committee also considered the potential impact of tree removals through the industry funded program which removed about 3,500 acres, and the tree removal program funded through USDA (California Prune/Plum Diversion Program), but concluded that these efforts alone were not likely to reduce the oversupply of small dried prunes sufficiently. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation during the 2001–02 crop year. This alternative was not widely supported for a number of reasons. Reserve pools for prunes have historically been implemented “across the board” as far as sizes are concerned. While there is an exchange provision that allows handlers to remove larger prunes from the pool by replacing them with smaller prunes and the value difference in cash, this would be a cumbersome, expensive-to-administer alternative to implementing this undersized regulation. A third alternative discussed was to advance to a  $2\frac{5}{32}$  screen undersized regulation for French prunes. However, handlers expressed concern that this will reduce the amount of manufacturing prunes (approximately 6,000 tons) available for the manufacture of prune juice and concentrate. This will increase the prices of these products.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes were implemented for

the purpose of improving product quality. The increases to  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will 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 rule.

In addition, the Committee’s meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Friday, March 15, 2002, (67 FR 11625). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. The rule provided a comment period that ended April 15, 2002. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend

to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

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

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 993.409 is added to read as follows:

#### § 993.409 Undersized prune regulation for the 2002–03 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2002–03 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes,  $2\frac{4}{32}$  of an inch in diameter; for non-French prunes,  $30\frac{3}{32}$  of an inch in diameter.

Dated: May 3, 2002.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02–11675 Filed 5–9–02; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Parts 516 and 567

[No. 2002–19]

RIN 1550–AB45

#### Capital: Qualifying Mortgage Loan, Interest Rate Risk Component, and Miscellaneous Changes

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is making miscellaneous changes to its capital regulations. These changes are designed to eliminate unnecessary capital burdens and to align OTS capital regulations more closely to those of the other federal banking agencies. Under the final rule, a one-to four-family residential first mortgage loan will qualify for a 50 percent risk weight if it is underwritten in accordance with the prudent underwriting standards found in the Interagency Guidelines for Real

Estate Lending, including standards relating to loan-to-value (LTV) ratios. The final rule also clarifies certain issues regarding the calculation of the LTV ratio.

OTS also is eliminating the requirement that a thrift must deduct from total capital that portion of a land loan or a nonresidential construction loan in excess of an 80 percent LTV ratio; eliminating the interest rate risk component of the risk-based capital regulations; modifying the definition of OECD-based country; and making a technical change to conform its treatment of reserves for loan and lease losses to that of the other federal banking agencies.

**DATES:** Effective July 1, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654; David Riley, Project Manager, (202) 906–6669, Supervision Policy; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 15, 2001, OTS published a notice of proposed rulemaking seeking comment on a number of changes to its capital regulations. 66 FR 15049. These changes were designed to eliminate unnecessary burden and to align OTS capital regulations more closely to those of other federal banking agencies.<sup>1</sup> These proposed changes comply with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), which directs the banking agencies to make their regulations and guidance uniform, consistent with principles of safety and soundness, statutory law and policy, and the public interest.

Specifically, OTS proposed to change its definition of a qualifying mortgage loan. Under current rules, a one-to four-family residential first mortgage loan will qualify for a 50 percent risk weight if it has a LTV ratio of 80 percent or less and meets other criteria. OTS proposed to revise the LTV requirement to permit a loan to qualify for a 50 percent risk weight if it has a LTV ratio of less than 90 percent. OTS also proposed to: (1) Eliminate the requirement that a thrift must deduct from total capital that

portion of a non-residential construction and land loan that exceeds an 80 percent LTV ratio; (2) eliminate the interest rate risk component of the capital rules; (3) increase the risk weight on high quality, stripped mortgage-related securities; (4) modify the definition of OECD-based country; and (5) make a technical change to the treatment of reserves for loan and lease losses.

##### II. Comment Discussion

Eleven commenters responded to the proposed rule. The commenters included one savings and loan holding company, seven savings associations, and three trade associations. Generally, the commenters supported the proposed rule. These comments are discussed below.

##### A. One-to Four-Family Residential Mortgage Loans

OTS and the other federal banking agencies apply similar, but not identical, capital rules to one- to four-family residential first mortgage loans. Each agency provides that a one- to four-family residential first mortgage loan may receive a 50 percent risk weight if the loan meets certain specified criteria. To be eligible to receive the 50 percent risk weight, each agency requires that the loan may not be more than 90 days delinquent and must be prudently underwritten.<sup>2</sup>

Only OTS rules specifically require that a one- to four-family residential loan must have a LTV ratio of 80 percent or less at origination to qualify for the 50 percent risk weight.<sup>3</sup> All of the federal banking agencies, however, have indicated that prudent underwriting must include an appropriate LTV ratio,<sup>4</sup> and have clarified that a loan secured by a one- to four-family residential property will have an appropriate LTV ratio if the loan complies with the Interagency Guidelines for Real Estate Lending (Interagency Lending Guidelines).<sup>5</sup> These guidelines provide that an institution should establish internal LTV limits for real estate loans, including loans on one- to four-family residential properties. The guidelines do not establish a specific supervisory LTV limit for such loans. Rather the

<sup>2</sup> 12 CFR part 3, App. A., Sec. 3(a)(3)(iii)(OCC); 12 CFR part 208, App. A., Sec. III.C.3.(FRB); 12 CFR part 325, App. A., Sec. ILC. (FDIC); 12 CFR 567.1 (OTS).

<sup>3</sup> See definition of qualifying mortgage loans at § 567.1.

<sup>4</sup> 64 FR 10194, 10196, fn. 6 (Mar. 2, 1999).

<sup>5</sup> *Id.* The Interagency Guidelines for Real Estate Lending are located at 12 CFR part 34, subpart D (OCC); 12 CFR part 208, subpart E (FRB); 12 CFR part 365 (FDIC); and 12 CFR 560.100–101 (OTS).

<sup>1</sup> The other federal banking agencies include the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).