

Executive Order 12866

The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This action simplifies the regulations concerning official performance requirements for grain inspection equipment by removing unnecessary language. No cost to affected entities results from this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

Donna Reifschneider, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This action simplifies the regulations concerning official performance requirements for grain inspection equipment by removing unnecessary language concerning testing of dividers. There currently are 56 official agencies, 43 private, 7 States and 6 delegated states under the United States Grain Standards Act. Most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further the regulations are applied equally to all entities.

Information Collection and Recordkeeping Requirements

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995. (44 U.S.C. 3501, *et seq.*)

Background

FGIS is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date

of publication in the **Federal Register** unless we receive written comments or written notice of intent to submit comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed.

If we receive written comments or written notice of intent to submit comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered and a final rule addressing the comments will be published.

As discussed above, if we receive no written comments or written notice of intent to submit comments within 30 days of publication of this direct final rule, this final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this final rule, confirming that it is effective on the date indicated in this document.

List of Subjects in 7 CFR Part 801

Grain inspection, Scientific equipment, and Weighing.

- For reasons set forth in the preamble, 7 CFR part 801 is amended as follows:
- 1. The authority citation for Part 801 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

§ 801.10 [Removed]

- 2. Section 801.10 is removed from the CFR and is reserved.

Donna Reifschneider,
Administrator.

[FR Doc. 03-26388 Filed 10-22-03; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 993**

[Docket No. FV03-993-4 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the

assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2003-04 and subsequent crop years from \$2.60 to \$2.00 per ton of salable dried prunes. The Committee locally administers 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 crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, 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, Washington, DC 20250-0237; 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 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2003, and continue until

amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 2003–04 and subsequent crop years from \$2.60 per ton to \$2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2003, and unanimously recommended 2003–04 expenditures of \$341,000 and an assessment rate of \$2.00 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were \$384,370. The assessment rate is \$0.60 lower than the rate previously in effect.

The Committee was able to recommend a lower assessment rate this year because salable prune production is expected to be 170,500 tons, 15,500 tons higher than production last year. With a larger 2003–04 prune crop and lower budget, an assessment rate of \$2.00 per ton will provide sufficient funds for Committee operations this year. The following table compares major budget expenditures recommended by the Committee on June 26, 2003, and major budget expenditures in the 2002–03 budget.

Budget expense categories	2002–03	2003–04
Total Personnel Salaries	\$232,575	\$220,540
Total Operating Expenses	136,850	103,750
Reserve for Contingencies	14,945	16,710

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year continues to be estimated at 170,500 salable tons, which should provide \$341,000 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Interest income also will be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2002–03 crop year (currently estimated at \$78,947) for up to 5 months beyond the end of the crop year to meet 2003–04 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

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

Although this assessment rate 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The

Committee's 2003–04 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Eight of the 21 handlers (38%) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62%) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3% of the 1,205 total producers, may be considered large growers with annual income over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent crop years from \$2.60 per ton to \$2.00 per ton of salable dried prunes. The Committee unanimously recommended 2003–04 expenditures of \$341,000 and an assessment rate of \$2.00 per ton of salable dried prunes.

The assessment rate is \$0.60 lower than the rate previously in effect. The quantity of assessable dried prunes for the 2003–04 crop year continues to be estimated at 170,500 salable tons. Thus, the \$2.00 rate should provide \$341,000 in assessment income and be adequate to meet this year's expenses. Interest

income also will be available to cover budgeted expenses if the 2003–04 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 26, 2003, and major budget expenditures in the 2002–03 budget.

Budget expense categories	2002–03	2003–04
Total Personnel Salaries	\$232,575	\$220,540
Total Operating Expenses	136,850	103,750
Reserve for Contingencies	14,945	16,710

Prior to arriving at its budget of \$341,000, the Committee considered information from various sources, such as the Committee’s Executive Subcommittee. An alternative to this action was to continue with the \$2.60 per ton assessment rate. However, an assessment rate of \$2.60 per ton in combination with the estimated crop of 170,500 salable tons would have generated monies in excess of that needed to fund all the budget items for 2003–04. The assessment rate of \$2.00 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 2002–03 crop year (currently estimated at \$78,947) for up to 5 months beyond the end of the crop year to fund 2003–04 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 2003–04 will be adequate to cover authorized expenses.

The grower price for the 2003–04 season is expected to average about the same as the estimated 2002–03 average grower price of about \$800 per salable ton of dried prunes. Based on an estimated 170,500 salable tons of dried prunes, assessment revenue during the 2003–04 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee’s meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and

participate in Committee deliberations on all issues. Like all Committee meetings, the June 26, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

An interim final rule concerning this action was published in the **Federal Register** on August 6, 2003 (68 FR 46436). Copies of that rule were also mailed or sent via facsimile to all prune handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 6, 2003, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.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.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, 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 68 FR 46436 on August 6, 2003, is adopted as a final rule without change.

Dated: October 17, 2003.

Kenneth C. Clayton,
Associate Administrator, Agricultural Marketing Service.

[FR Doc. 03–26713 Filed 10–22–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 993 and 999

[Docket No. FV03–993–3 FIR]

Dried Prunes Produced in California; Temporary Suspension of the Mandatory Outgoing Prune Inspection and Quality Requirements, and Modification of the Undersized Prune Disposition Requirements Under the Marketing Order, and Suspension of the Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which suspended for three years the outgoing prune inspection and quality requirements under the California Dried Prune Marketing Order (Order) and its administrative rules and regulations, and the prune import regulation. Continued suspension of the outgoing inspection and quality requirements, and import regulation provisions ensures relief from these requirements. The Order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). During the three-year suspension, the industry will have the opportunity to develop and implement outgoing inspection and finished product grade standards more consistent with current industry needs. In the absence of additional rulemaking to modify or terminate the suspended provisions, they will come back into effect automatically at the end of the three-year period. The modifications to the undersized prune disposition requirements made by the interim final rule also are continued without change.

EFFECTIVE DATE: November 24, 2003.

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, or Fax: (202) 720–8938.