

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV04-993-2 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2004-05 and subsequent crop years from \$2.00 to \$4.00 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 Committee recommended a higher assessment rate because the 2004-05 crop is expected to be very small and a higher assessment rate is needed to generate sufficient funds to meet program expenses. The crop year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 7, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, 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](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 grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable dried prunes beginning on August 1, 2004, 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 would increase the assessment rate established for the Committee for the 2004-05 and subsequent crop years from \$2.00 to \$4.00 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 2003-04 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 23, 2004, and unanimously recommended 2004-05 expenditures of \$275,800 and an assessment rate of \$4.00 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were \$322,022. The assessment rate of \$4.00 per ton is \$2.00 higher than the rate currently in effect. The Committee recommended a higher assessment rate because a very small crop is expected this year. The salable prune production this year is expected to be 68,950 tons, the smallest crop since the early 1900's. The assessment rate of \$4.00 per ton is expected to provide sufficient funds for Committee operations this year.

The following table compares major budget expenditures recommended by the Committee on June 23, 2004, and major budget expenditures in the 2003-04 budget.

Budget expense categories	2003-04	2004-05
Total Personnel Salaries .....	\$179,726	\$181,335
Total Operating Expenses .....	96,876	85,080
Reserve for Contingencies .....	45,420	9,385

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 is estimated at 68,950 salable tons, which should provide \$275,800 in assessment income. Income derived from handler assessments is expected to be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2003-04 crop year (currently estimated at \$105,000) for up to 5 months beyond the end of the crop year to meet 2004-05 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would be undertaken as necessary. The Committee's 2004-05 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

**Initial 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 initial regulatory flexibility analysis.

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

There are approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. 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 22 handlers (36.4 percent) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Fourteen of the 22 handlers (63.6 percent) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,100 total producers, would 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 would increase the assessment rate established for the Committee and collected from handlers for the 2004-05 and subsequent crop years from \$2.00 to \$4.00 per ton of salable dried prunes. The Committee unanimously recommended 2004-05 expenditures of \$275,800 and an assessment rate of \$4.00 per ton of salable dried prunes. The proposed assessment rate of \$4.00 per ton is \$2.00 higher than the current rate. The quantity of assessable dried prunes for the 2004-05 crop year is now estimated at 68,950 salable tons. Thus, the \$4.00 rate should provide \$275,800 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 2004-05 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 23, 2004, and major budget expenditures in the 2003-04 budget.

Budget expense categories	2003-04	2004-05
Total Personnel Salaries .....	\$179,726	\$181,335
Total Operating Expenses .....	96,876	85,080
Reserve for Contingencies .....	45,420	9,385

Prior to arriving at its budget of \$275,800, the Committee considered information from various sources, such as the Committee's Executive Subcommittee. An alternative to this action would be to continue with the \$2.00 per ton assessment rate. However, an assessment rate of \$2.00 per ton in combination with the estimated crop of 68,950 salable tons would not generate sufficient monies needed to fund all the budget items for 2004-05. The

assessment rate of \$4.00 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 2003-04 crop year (currently estimated at \$105,000) 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 2004-05 would be adequate to cover authorized expenses.

The grower price for the 2004-05 season is expected to average above the estimated 2003-04 average grower price of about \$750 per salable ton of dried prunes. Based on an estimated 68,950 salable tons of dried prunes, assessment revenue during the 2004-05 crop year is

expected to be less than 1 percent of the total expected grower revenue.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 23, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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.

A 20-day comment period is provided to allow interested persons to respond to this proposed rule. Twenty days is deemed appropriate because: (1) The 2004–05 crop year begins on August 1, 2004, and the marketing order requires that the rate of assessment for each crop year apply to all assessable prunes handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### 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 proposed to be amended as follows:

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

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

**Authority:** 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

##### § 993.347 Assessment rate.

On and after August 1, 2004, an assessment rate of \$4.00 per ton is established for California dried prunes.

Dated: August 10, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. FV04–987–2 PR]

#### Domestic Dates Produced or Packed in Riverside County, California; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the California Date Administrative Committee (committee) for the 2004–05 and subsequent crop years from \$0.75 to \$0.85 per hundredweight of dates handled. The committee locally administers the marketing order which regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The Committee recommended increasing the assessment rate because additional revenues are needed to fund program operations. The crop year begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 15, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, Terry Vawter or Richard P. Van Diest, Marketing Specialists, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Marketing Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from