

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV03-993-1 IFR]

#### Dried Prunes Produced in California; Changes in Reporting Requirements

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the reporting requirements specified under the administrative rules and regulations of the Federal marketing order for California dried prunes (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule allows California prune handlers to report their shipments less frequently and submit less detailed information than is currently required. Handlers will report shipments once every three months (quarterly), rather than monthly, and will no longer report export shipment destination countries. Also, the reporting of type of pack will be changed from "carton, visipak, and other" to "bulk and consumer pack" to reveal less marketing information. This action will reduce the information collection burden upon handlers, while still enabling the Committee to collect information necessary for program administration.

**DATES:** Effective June 25, 2003. Comments must be received by August 25, 2003 will be considered prior to issuance of a final rule.

**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*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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:

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.

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 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is 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 rule modifies language in the order's administrative rules and regulations to allow California prune handlers to report their shipments quarterly, rather than monthly. Also, handlers will only be required to report their export market shipments to the Committee by region, rather than by country. The amount of information disseminated by the Committee is also reduced. The Committee will no longer report the export shipments to the industry by country, and the regions that handlers ship into will only be reported once a year, when the marketing policy is prepared. Also, the reporting of type of pack is changed from "carton, visipak, and other" to "bulk and consumer pack". These changes will reduce the information collection burden upon handlers and the Committee's administrative costs because of the switch to quarterly distribution. This action was unanimously recommended by the Committee at a meeting on April 3, 2003.

#### Marketing Order Authority

Section 993.72 of the order provides authority for the Committee to require handlers to file such reports of acquisitions, sales, uses, and shipments of prunes, as may be requested by the Committee. Also, pursuant to § 993.36(c), one the Committee's duties is to assemble data on the producing, handling, shipping, and marketing conditions relative to prunes in connection with the performance of its official duties. To prevent the release of proprietary business information, the

information from all of the handlers is totaled and then distributed.

### Administrative Rules and Regulations

Section 993.172 requires handlers to report each month on their holdings, receipts, and shipments of prunes produced in California.

Paragraph (d) of § 993.172 requires handlers to report shipments of dried prunes produced in California. This information is reported on PMC Form 12.1, "Report of Shipments," and an addendum to that form referred to as PMC Form 12.1A, "Cumulative Prune Export Shipments."

Prior to the implementation of this rule, each handler was required to file with the Committee for each month, not later than the 5th working day of the next succeeding month, Forms PMC 12.1 and 12.1A, reporting shipments (including cumulative exports by country) of prunes during the crop year through the last day of the immediately preceding month. PMC Form 12.1 was required to contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The pounds of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers as follows: (i) Domestic outlets segregated by uses (including Federal Government agencies); (ii) export markets segregated by countries; (iii) both domestic and export totals segregated by type of pack (carton, visipak, and other); and (iv) pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets;

(3) The total pounds shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total pounds of prunes not covered by, or excluded from, the definition of the term "prunes" (§ 993.5) shipped.

PMC Form 12.1A included a listing of the quantities of whole and pitted prunes exported together with the countries to which the exports were made.

### Proposed Action

Based upon competition concerns, the Committee unanimously recommended changing the frequency and amount of information that is required to be reported by handlers. While this rule would still allow the Committee to obtain the information it needs for program purposes, this rule allows California prune handlers to file their Shipment Reports on a quarterly, rather

than monthly basis, as currently required.

Handlers will no longer be reporting their export shipment destination countries to the Committee. Instead handlers will only report the regions into which they ship. The amount of information disseminated by the Committee will also be reduced. The Committee will no longer report the countries to which the industry exports, but only the total export shipments (except that total export shipments into regions would be reported annually for marketing policy purposes). The reporting of type of pack would be changed from "carton, visipak, and other" to "bulk and consumer pack" to reveal less marketing information.

By distributing the Shipment Report quarterly, instead of monthly, and revising the report's format to provide less detailed information, the Committee is reducing the amount of marketing information it is releasing. However, this information still satisfies the Committee's need for information to prepare the marketing policy, verify compliance, monitor the accuracy of handler reports, justify government purchases or supply control recommendations, and to help the industry develop their marketing programs and evaluate USDA Market Access Program applications. At least once a year, export shipments by region will be reported for the entire crop year. During the remainder of the year, the Committee may only report total export shipments.

These recommendations by the Committee will reduce the reporting burden on California prune handlers as well as help address some of the marketing concerns of the industry and Committee. These changes will also reduce some of the Committee's administrative costs in disseminating this information quarterly, rather than monthly. Accordingly, appropriate changes are made to paragraph (d) of § 993.172.

### Initial Regulatory Flexibility Analysis and the Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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.

### Industry Profile

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 of less than \$750,000 and small agricultural service firms are defined as those having annual receipts of less than \$5,000,000.

Currently 8 of the 21 handlers (38 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than \$5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would 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.

### Summary of Rule Change

This rule changes the reporting requirements specified in § 993.172(d) of the administrative rules and regulations regarding the reporting of dried prune shipments by handlers. This rule allows the California prune handlers to file their Shipment Reports quarterly, rather than monthly, as required currently. Also handlers will no longer report their export market shipments to the Committee by country, but by region. The amount of information disseminated by the Committee will also be reduced. The Committee will no longer be reporting export shipments by country, but only in total (except that total export shipments into regions would be reported annually to enable the Committee to prepare its marketing policy). The reporting of type of pack also would be changed from "carton, visipak, and other" to "bulk and consumer pack".

### Impact of Regulation

Regarding the impact of this rule on affected entities, this action would reduce the reporting and recordkeeping burden on California prune handlers and reduce the Committee's administrative costs. The Committee estimates that 21 California prune

handlers are required to file the Supply and Disposition reports each month. It is estimated that it will take each handler about 20 minutes to complete each revised PMC Form 12.1, and about 20 minutes to complete each revised PMC Form 12.1A. In comparison it is estimated that currently it takes each handler about 30 minutes to complete each PMC Form 12.1, and about 35 minutes to complete each PMC Form 12.1A. Thus, completion of the revised reports will take 10 minutes less, and 15 minutes less, respectively, than that required for each of the current reports. The total annual industry reporting burden for the current PMC Form 12.1 is 120 hours, and for the PMC Form 12.1A is 139 hours, for a combined total of 259 hours. The total burden hours for the revised PMC Forms 12.1 and 12.1A is 28 hours each, for a combined total of 55 hours. These changes will thereby reduce the annual industry information collection burden by 204 hours. Committee costs would be reduced because the report will be compiled and distributed quarterly, rather than monthly.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection burden reduction contained in this rule has been submitted to the Office of Management and Budget. This action reduces existing approved burden requirements which have been assigned OMB No. 0581-0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

#### Alternatives Considered

The Committee considered alternatives to this action at meetings on March 11, April 2, and April 3, 2003. The Executive Subcommittee and Committee discussed the possibility of eliminating all reporting, but determined that this was not viable because it needs certain information to prepare its marketing policy and for other decision-making. Some industry leaders also felt that the statistics are important for grower, handler, and bargaining association decisions that need to be made each year. Finally, the Executive Subcommittee and Committee discussed disseminating the information only to members and alternates of the Committee, its subcommittees, and to

California prune handlers. Ultimately, the Executive Subcommittee and Committee decided to proceed with the changes in shipment reporting requirements to reduce the frequency of the reports, and to reduce the amount of information reported to and disseminated by the Committee.

The Executive Subcommittee's March 11 and April 2, 2003, meetings and the Committee's April 3, 2003, meeting where this issue was deliberated were public and widely publicized throughout the prune industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these changes on small businesses.

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 60-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this matter.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be implemented as soon as possible because the 2003-2004 crop year begins August 1, 2003; (2) this rule relaxes handler reporting requirements; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) a 60-day comment period is provided and all comments received will be considered in finalizing this rule.

#### 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 IN CALIFORNIA

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

**Authority:** 7 U.S.C. 601-674.

■ 2. In § 993.172, the section heading and paragraph (d) are revised to read as follows:

#### § 993.172 Reports of holdings, receipts, uses, and shipments.

\* \* \* \* \*

(d) *Shipments by handlers.* Each handler shall file with the Committee for each quarter, not later than the 5th working day of the months of November, February, May and August, signed reports on Form PMC 12.1, "Reports of Shipments," and Form 12.1A, "Cumulative Prune Export Shipments" reporting shipments of prunes during the crop year through the last day of the immediately preceding quarter. Such reports shall contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The pounds of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers as follows: Domestic outlets segregated by uses (including Federal Government agencies); export markets segregated by regions; both domestic and export totals segregated by type of pack (bulk and consumer pack); and pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets segregated by regions;

(3) The total pounds shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total pounds of prunes not covered by, or excluded from, the definition of the term "prunes" (§ 993.5) shipped.

\* \* \* \* \*

Dated: June 18, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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