



Billing code 3410-02 P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 993**

**[Doc. No. AMS-FV-11-0068; FV11-993-1 FIR]**

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

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Prune Marketing Committee (Committee) for the 2011-12 and subsequent crop years from \$0.27 to \$0.22 per ton of salable dried prunes handled. The Committee locally administers the marketing order for dried prunes produced in California. The interim rule was necessary to allow the Committee to lower its assessment rate because of a substantial decrease in wage and salary expenses. The current excess funds carried forward along with the estimated interest income, combined with the funds generated from the decreased assessment rate and decreased crop is expected to provide adequate income to cover anticipated 2011-12 expenses.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andrea Ricci or Kurt J. Kimmel, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Andrea.Ricci@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, Marketing Order and Agreement Division, 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: Laurel.May@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 110 and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes 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.

Under the order, California dried prune handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable California dried prunes for the entire crop year, and continue indefinitely until amended, suspended, or terminated. The Committee's crop year begins August 1, and ends on July 31.

In an interim rule published in the **Federal Register** on August 30, 2011, and effective on August 31, 2011 (76 FR 53813, Doc. No. AMS-FV-11-0068; FV11-993-1 IR), § 993.347 was amended by decreasing the assessment rate established for the Committee for the 2011-12 and subsequent crop years from \$0.27 to \$0.22 per ton of salable dried prunes handled. The decrease in the per salable ton assessment rate allows the Committee to lower its assessment rate because of a substantial decrease in wage and salary expenses. The current excess funds carried forward along with the estimated interest income, combined with the funds generated from the decreased assessment rate and decreased

crop to provide adequate income to cover anticipated 2011-12 expenses.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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.

There are approximately 800 producers of dried prunes in the California area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than \$750,000 and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

(13 CFR 121.201)

Committee data indicates that about 64 percent of the handlers ship under \$7,000,000 worth of dried prunes. Dividing the average dried prune crop value for 2010 reported by the National Agricultural Statistics Service (NASS) of \$149,860,000 by the number of producers (800) yields an average annual producer revenue estimate of about \$187,325. Thus, the majority of handlers and California dried prune producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011-12 and subsequent crop years from \$0.27 to \$0.22 per ton of salable dried prunes. The Committee unanimously recommended 2011-12 expenditures of \$46,497 and an assessment rate of \$0.22 per ton of salable dried prunes for the 2011-12 crop year. The assessment rate of \$0.22 is \$0.05 lower than the rate previously in effect. Applying the \$0.22 per ton assessment rate to the Committee's 122,000 ton estimate should provide \$26,840 in assessment income. Thus, the current excess funds carried forward along with the estimated interest income, combined with funds generated from the decreased assessment rate and decreased crop is

expected to provide adequate income to cover anticipated 2011-12 crop year expenses.

This rule continues in effect the action that decreased 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 16, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

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

Comments on the interim rule were required to be received on or before October 31, 2011. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0068-0001>.

This action also affirms information contained in the interim rule concerning the Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR

53813, August 30, 2011) 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 rule amending 7 CFR part 993, which was published at 76 FR 53813 on August 30, 2011, is adopted as a final rule, without change.

Dated: April 6, 2012

David R. Shipman  
Acting Administrator  
Agricultural Marketing Service

[FR Doc. 2012-8820 Filed 04/11/2012 at 8:45 am; Publication Date: 04/12/2012]