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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS-FV-13-0065; FV13-993-1 PR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate established for the Prune Marketing Committee (Committee) for the 2013-14 and subsequent crop years from \$0.22 to \$0.28 per ton of salable dried prunes handled. The Committee locally administers the marketing order, which regulates the handling of dried prunes grown in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. 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 [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be

sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. Comments should reference the document 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.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Jerry.Simmons@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program,

AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202)720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed 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 grown 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 proposed rule in conformance with Executive Orders 12866 and 13563.

This proposed 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 would be applicable to all assessable dried prunes beginning on August 1, 2013, and continue until amended, suspended, or terminated.

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 the 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 entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2013-14 and subsequent crop years from \$0.22 to \$0.28 per ton of salable dried prunes handled.

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 of goods and services in their local area. Therefore, they are 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 2011-12 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 25, 2013, and unanimously recommended 2013-14 expenditures of \$43,791 and an assessment rate of \$0.28 per ton of salable dried prunes. The assessment rate of \$0.28 is \$0.06 higher than the rate currently in effect, even though last year's budgeted expenditures of \$44,968 were higher than those recommended for this year.

The Committee unanimously recommended the higher assessment rate because the production estimate of 105,000 tons of salable dried prunes for the 2013-14 crop year is substantially lower than the 137,285 tons produced during the 2012-13 crop year. Using the proposed assessment rate, assessment income for the 2013-14 crop year would be \$29,400. Assessment income, combined with funds carried

over from the prior crop year and interest income, is expected to be adequate to cover budgeted expenses for the year.

The major expenditures recommended by the Committee for the 2013-14 year include \$26,944 for salaries, \$9,538 for operating expenses, and \$7,308 for contingencies. Budgeted expenses for these items in 2012-13 were \$22,997, \$9,970, and \$12,001, respectively.

The assessment rate recommended by the Committee was derived by considering the funds needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2013-14 crop year, and estimated interest income. As mentioned earlier, dried prune production for the year is estimated at 105,000 salable tons, which should provide \$29,400 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed and further rulemaking would be undertaken as necessary. The Committee's 2013-14 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) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed 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 businesses 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 of 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 less than \$7,000,000 worth of dried prunes. Dividing the average prune crop value for 2012 reported by the National Agricultural Statistics Service (NASS) of \$172,500,000 by the number of producers (800) yields an average annual producer revenue estimate of about \$215,625. Based on the foregoing, the majority of handlers and producers of dried prunes may be classified as small entities.

This proposal would increase the assessment rate established for the Committee and collected from handlers for the 2013-14 and subsequent crop years from \$0.22 to \$0.28 per ton of salable dried prunes. The Committee unanimously recommended 2013-14 expenditures of \$43,791 and an assessment rate of \$0.28 per ton of salable dried prunes.

The proposed assessment rate of \$0.28 is \$0.06 higher than the 2012-13 rate. The quantity of assessable dried prunes for the 2013-14 crop year is estimated at 105,000 tons. Thus, the \$0.28 rate should provide \$29,400 in assessment income, and when combined with carry-in funds and interest income, should be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2013-14 year include \$26,944 for salaries, \$9,538 for operating expenses, and \$7,308 for contingencies. Budgeted expenses for these items in 2012-13 were \$22,997, \$9,970, and \$12,001, respectively.

The Committee unanimously recommended the higher assessment rate because the production estimate of 105,000 tons of salable dried prunes for this year is substantially lower than the 137,285 tons produced last year. At the current assessment rate, the anticipated crop would not generate sufficient revenue to meet the 2013-14 budgeted expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, including the Committee's Executive Subcommittee. The assessment rate of \$0.28 per ton of salable dried prunes was recommended after considering various factors, including the amount of handler assessment revenue needed to meet

anticipated expenses, the estimated quantity of salable tons of California dried prunes for the 2013-14 crop year, excess funds carried forward into the 2013-14 crop year, and estimated interest income. An alternative to this action would be to continue with the \$0.22 per ton assessment rate. However, an assessment rate of \$0.28 per ton of salable dried prunes, along with excess funds from the 2012-13 crop year, is needed to provide enough income to fund the Committee's operations.

A review of historical crop and price information, as well as preliminary information pertaining to the 2013-14 season indicates that the producer price for salable dried prunes for the 2013-14 season could average about \$1,300 per ton. Utilizing this estimate and the proposed assessment rate of \$0.28, estimated assessment revenue as a percentage of total estimated producer revenue should be about 0.02 percent for the 2013-14 season ($\$0.28$ divided by $\$1,300$ per ton).

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 from the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the California dried prune industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 25, 2013, meeting was a public meeting. All entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California 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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

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/AMSV1.0/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2013-14 crop year began on August 1, 2013, and the marketing order requires that the rate of assessment for each crop year apply to all assessable prunes to be 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, Plum, 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, 2013, an assessment rate of \$0.28 per ton of salable dried prunes is established for California dried prunes.

Dated: October 17, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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