

Proposed Rules

Federal Register

Vol. 63, No. 36

Tuesday, February 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV98-993-1 PR]

Dried Prunes Produced in California; Undersized Regulation for the 1998-99 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized prune regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 1998-99 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the calculated excess of about 78,000 tons of dried prunes expected at the end of the 1997-98 crop year, by approximately 7,300 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by March 26, 1998, 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 in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. 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.

FOR FURTHER INFORMATION CONTACT:

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: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

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 produced 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 (Department) 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 proposal would 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 the Secretary 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 the Secretary 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 the Secretary'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 proposal invites comments on changes to the undersized regulation currently in effect for French prunes which pass freely through a screen opening from 23/32 to 24/32 in diameter and for non-French prunes from 28/32 to 30/32 of an inch in diameter for the 1998-99 crop year for volume control purposes. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule would be in effect from August 1, 1998, through July 31, 1999, and was unanimously recommended by the Committee at a November 18, 1997, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Since August 1, 1982, the undersized dried prune regulation specified in § 993.49(c) of the prune marketing order has been 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect continuously for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes * * *." Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733; September 11, 1974; and 42 FR 49802; September 28, 1977). During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403, respectively (40 FR 42530; September 15, 1975; and 41 FR 37306; September 3, 1976). The prune industry had an excess supply of prunes, particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years. For the 1994–95 crop year, the Committee recommended and the Department established volume regulation percentages and an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. At its meeting on November 18, 1997, the Committee unanimously recommended establishing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for volume control purposes for the 1998–99 crop year. That crop year begins August 1, 1998, and ends July 31, 1999.

The Committee estimated that this rule would reduce the calculated excess

of about 78,000 natural condition tons of dried prunes as of July 31, 1998, by approximately 7,300 natural condition tons, still leaving sufficient prunes to fill domestic and foreign trade demand during the 1998–99 crop year, and provide an adequate carryout on July 31, 1999, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is almost 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a world wide oversupply that is expected to continue growing into the next century (estimated at 387,170 natural condition tons by the year 2001); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1993–94 and 1996–97 crop years, the yield ranged from 2.3 to 2.8 versus a 10 year average of 2.2 tons per acre); and (4) a worsening of California's excess supply situation, even though dried prune shipments in 1996–97 reached a near-record high of 183,252 packed tons. The Committee also considered the quantity of "D" screen (24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes) prunes produced during the 1990–91 through 1996–97 crop years. The production of these small sizes ranged from 2,575 to 8,778 natural condition tons during that period. The Committee concluded that it had to utilize supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of California dried prune producers and handlers. The proposed changes to the undersized regulation for the 1998–99 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops of over 180,000 natural condition tons. Another large crop of 215,000 natural condition tons is forecast for the 1997–98 crop year, which will add to the existing oversupply. The yield per acre is forecast at 2.6 tons per acre. With an anticipated increase in bearing acreage, the 1998–99 season crop could be larger.

Because of the oversupply situation, producer prices for undersized prunes during the 1997–98 crop year have declined to \$40–50 per ton. This

represents a loss to the producer of about \$260–270 per ton. The lower pricing of the smaller prunes is expected to provide producers an incentive to produce larger sizes which the industry needs to meet the increasing market demand for pitted prunes. However, the Committee felt that the undersized rule change was needed to expedite the reduction of the inventories of small prunes, and more quickly bring supplies in line with needs. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. As discussed later, the average grower price for prunes during the 1998–99 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate as far as parity is concerned.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters would not be applied to imported prunes.

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 1,400 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Last year, as a percentage, about 34 percent of the handlers shipped over \$5,000,000 worth of dried prunes and 66 percent of the handlers shipped under \$5,000,000 worth of prunes. In addition, based on production, producer prices, and the total number of dried prune producers provided by the Committee, the average annual producer revenue is approximately \$136,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 1998-99 crop year for volume control purposes. This change in regulation would result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. The prune industry currently uses a "D" screen (24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes) for separating small prunes from the larger sizes. Thus, producers and handlers, both small and large, would not incur extra costs from having to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the increased openings would be the disposal of additional undersized prune tonnage (about 1,600 natural condition tons) to nonhuman consumption outlets as required by the order. With the less restrictive openings, only 5,686 natural

condition tons or 3.4 percent of the marketable production has been removed on average over the past seven crop years since 1990-91. Since the benefits and costs of the proposed action would be directly proportional to the quantity of "D" screen prunes produced or handled, small businesses should not be disproportionately affected by the proposal. Sugar content, prune density, and dry-away ratio vary from county-to-county, from orchard-to-orchard, and from season-to-season in the major producing areas of the Sacramento and San Joaquin Valleys. These areas account for over 99 percent of the State's production, and the prunes produced are homogeneous enough so that the proposal would not be inequitable to producers, both large and small, in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. While this proposed rule may initially impose some additional costs on producers and handlers, the costs are expected to be minimal, and would be offset by the benefits derived by the elimination of some of the excess supply of small sized prunes.

At the November 18, 1997, meeting, the Committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for the larger size prunes. According to industry members, the small size prunes being eliminated through this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak with producers losing money on every ton they deliver to handlers. The 1997 grower field price for "D" screen prunes is ranging between \$40 and \$50 per ton. The cost of drying a ton of such prunes is \$260 per ton at a 4 to 1 dry-away ratio, the cost to haul these prunes is at least \$20 per ton, and the producer assessment that must be paid to the California Prune Board (a body which administers the State marketing order for promotion) is \$30 per ton. The total cost is about \$310 per ton which equates to a loss of about \$260 per ton for every ton of "D" screen prunes produced and delivered to handlers.

The proposed rule is expected to benefit all producers and handlers by eliminating the smallest, least valuable prunes from the crop. This is expected

to help reduce the oversupply situation and lessen the downward pressure on small prune prices to producers. Further, producers may alter their cultural practices to grow the larger sizes needed by the industry to meet the market demand for pitted prunes.

Utilizing data provided by the Committee, the Department has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories would result in higher season-average prices which would benefit all producers. The removal of the smallest least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 7,300 tons of small-sized dried prunes during the 1998-99 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 102,386 tons of natural condition prunes on July 31, 1997, the end of the 1996-97 crop year. This was the largest year-end inventory reported since the Committee began collecting such statistics in 1949. The desired inventory level, which is based on an average 12-week supply deemed desirable to keep trade distribution channels full while awaiting new crop, is 40,991 natural condition tons. This leaves an inventory surplus of over 61,000 tons which will likely take the industry several years to market.

Further burdening this oversupply situation will be larger California prune crops over the next few years caused by the new prune plantings of recent years and higher yields per acre. During the 1990-91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1996-97, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons to the acre over the most recent three-year period, compared to a 10-year average of 2.2 tons to the acre. The 1997-98 crop is expected to be 215,000 natural condition tons which will add to the existing oversupply. Barring unforeseen circumstances, the 1998-99 crop may be larger further worsening the industry's oversupply problems.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, the trade should begin taking a position early in the season for their dried prune needs, which would help firm up market prices and eventually reflect a higher overall price to the

producers. In addition, as producers implement improved cultural and thinning practices, the overall size of the prunes will get larger. As a result, producer returns would increase because producers will no longer be receiving \$40–50 per ton for the small-sized fruit at a \$260–270 per ton loss, but be receiving the higher prices paid for the larger sizes.

For the 1992–93 through the 1996–97 crop years, the season average price received by the producers ranged from a high of \$1,121 per ton to a low of \$838 per ton during the 1996–97 crop year. The season average price received by producers averaged about 60 percent of parity during the 1992–93 through 1996–97 crop years. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1997–98 and 1998–99 seasons is expected to be below \$800 per ton, or about 40 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change was needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to the proposal.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation

because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any 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.

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

In addition, the Committee's meeting was widely publicized throughout the 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 November 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members, of which seven are handlers, fourteen are producers, and one is a public member. The majority of the producer and handler members are small entities. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for almost a year, and this proposed rule reflects their deliberations completely. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible so that handlers and producers will be informed of any regulation for the 1998–99 crop year (beginning August 1, 1998). Producers would need time to thin prune-plums in order to obtain larger sizes. Producers generally begin thinning in late April. All written comments timely received will be considered before a final determination is made on this matter.

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. A new § 993.405 is added to read as follows:

§ 993.405 Undersized prune regulation for the 1998–99 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 1998–99 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: February 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–4595 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–248–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes. This proposal would require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracks and corrosion around and under chafing plates of the wing root,