

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV99-993-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the current assessment rate from \$2.16 to \$3.28 per ton of salable dried prunes for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1998-99 and subsequent crop years. The Committee is responsible for local administration of 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 increased assessment rate is needed because the assessable tonnage is expected to be 99,750 salable tons, or 38 percent less than the Committee's initial estimate for 1998-99. Increasing the assessment rate to \$3.28 per ton of salable dried prunes will allow the Committee to meet its 1998-99 expenses and to operate for the first three months of the 1999-2000 crop year before monies become available from that year's assessments. The higher assessment rate applies to the entire 1998-99 crop year, which began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** January 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Diane Purvis, Marketing Assistant, 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, 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, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders 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, or E-mail: Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**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 (Department) 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 issued herein will be applicable to all assessable dried prunes beginning on August 1, 1998, 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 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. Such 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 rule increases the assessment rate established for the Committee for the 1998-99 and subsequent crop years from \$2.16 per ton to \$3.28 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, 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 1998-99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 1, 1998, and unanimously recommended reducing its 1998-99 budget from \$348,840 to \$327,180 and increasing the current assessment rate from \$2.16 to \$3.28 per ton of salable dried prunes. The assessment rate of \$2.16 per ton was approved by the Department in a final rule published in the **Federal Register** on October 2, 1998 (63 FR

52959). The \$1.22 per ton increase in the assessment rate to \$3.28 per ton will allow the Committee to meet its 1998–99 expenses and to operate for the first three months of the 1999–2000 crop year before monies become available from next year’s assessments. The California Agricultural Statistical Service originally estimated a 170,000

ton crop (161,500 salable tons) for the 1998–99 crop year. Due to unusually cool and wet weather conditions caused by the El Niño this season, the 1998–99 crop harvest is about four weeks late, of poor quality, and approximately 50 percent less than normal size. The Committee now expects the salable prune tonnage to be 99,750 salable tons,

or 38 percent less than the Committee’s initial estimate for 1998–99.

The following table compares major budget expenditures recommended by the Committee on June 25, 1998, and major budget expenditures in the revised budget recommended on December 1, 1998:

Budget expense categories	(\$1,000)	
	6/25/98	12/1/98
Salaries, Wages and Benefits .....	191.5	189.7
Research and Development .....	30	0
Office Rent .....	23	23
Travel .....	21	18.5
Acreage Survey .....	21	0
Reserve (Contingencies) .....	9.14	50.93
Equipment Rental .....	9	9
Data Processing .....	8	3.85
Stationery and Printing .....	5.5	5
Office Supplies .....	5	5
Postage and Messenger .....	5	5

The assessment rate recommended by the Committee was derived by dividing the reduced expenses by its reduced estimate of salable California dried prunes. Production of dried prunes for the year is estimated at 99,750 salable tons which should provide \$327,180 in assessment income. Interest income also will be available to cover anticipated expenses. The Committee is authorized to use excess assessment funds from the 1997–98 crop year (currently estimated at \$58,088) for up to five months beyond the end of the crop year to meet 1998–99 crop year expenses. At the end of the five months, the Committee refunds or credits excess funds to handlers (\$993.81(c)). Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses.

The assessment rate established in this rule will be in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine

whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee’s 1998–99 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are 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.

An updated prune industry profile shows that 8 of the 20 handlers (40 percent) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business

Administration. Twelve of the 20 handlers (60 percent) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, are considered large growers with annual income over \$500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent crop years from \$2.16 per ton to \$3.28 per ton of salable dried prunes. The Committee unanimously recommended 1998–99 expenditures of \$327,180 and an assessment rate of \$3.28 per ton of salable dried prunes. The assessment rate of \$3.28 is \$1.22 higher than the current 1998–99 rate (63 FR 52959, October 2, 1998). The quantity of assessable dried prunes for the 1998–99 crop year is now estimated at 99,750 salable tons. Thus, the \$3.28 rate should provide \$327,180 in assessment income and be adequate to meet this year’s expenses. Interest income will also be available to cover budgeted expenses if the 1998–99 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 25, 1998, with major budget expenditures in the revised budget recommended on December 1, 1998:

Budget expense categories	(\$1,000)	
	6/25/98	12/1/98
Salaries, Wages and Benefits .....	191.5	189.7
Research and Development .....	30	0
Office Rent .....	23	23
Travel .....	21	18.5
Acreage Survey .....	21	0
Reserve (Contingencies) .....	9.14	50.93
Equipment Rental .....	9	9
Data Processing .....	8	3.85
Stationery and Printing .....	5.5	5
Office Supplies .....	5	5
Postage and Messenger .....	5	5

Due to unusually cool and wet weather conditions caused by the El Nino this season, the 1998-99 crop harvest is about four weeks late, of poor quality, and approximately 50 percent less than normal size. At its December 1, 1998, meeting, the Committee reduced the California Agricultural Statistical Service's dried prune crop estimate for 1998-99 from 170,000 tons (161,500 salable tons) to 103,000 tons (99,750 salable tons).

The Committee reviewed and unanimously recommended 1998-99 expenditures of \$327,180. The assessment rate of \$3.28 per ton of salable dried prunes was then determined by dividing the total recommended budget by the reduced estimate for salable dried prunes. The Committee is authorized to use excess assessment funds from the 1997-98 crop year (currently estimated at \$58,088) for up to five months beyond the end of the crop year to fund 1998-99 crop year expenses. At the end of the five months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 1998-99 would be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1998-99 season should average about \$800 per salable ton of dried prunes. Based on estimated shipments of 99,750 salable tons, assessment revenue during the 1998-99 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action increases 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 December 1, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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.

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

A proposed rule concerning this action was published in the **Federal Register** on December 18, 1998 (63 FR 70063). The proposal was made available through the Internet by the Office of the Federal Register. A 10-day comment period ending December 28, 1998, was provided for interested persons to respond to the proposal. No comments were received.

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to collect assessments from handlers based on the higher rate as soon as possible to pay its expenses which are incurred on a continuous basis; (2) the 1998-99 crop year began on August 1, 1998, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such year.

Further, handlers are aware of this rule which was recommended unanimously at a public meeting. Also, no comments were received in response to the proposed rule on the assessment rate increase.

**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 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, 1998, an assessment rate of \$3.28 per ton is established for California dried prunes.

Dated: January 19, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-1611 Filed 1-22-99; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

[Airspace Docket No. 98-ASW-47]

RIN 2120-AA66

**Amendments to Restricted Areas 6302C, D and E; Fort Hood, TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.