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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02-993-2 FR]

Dried Prunes Produced in California; Revising the Regulations Concerning Compensation Rates for Handlers' Services Performed Regarding Reserve Prunes Covered Under the California Dried Prune Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations concerning compensation rates for handlers' services performed in connection with reserve prunes covered under Marketing Order No. 993 (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule will establish a procedure in the administrative rules and regulations which the Committee will follow to compute the level of handler payments for holding reserve prunes during and beyond the crop year of acquisition. These payment rates will reflect current industry costs. The rule also will establish time frames for changing the payment rates, and procedures for informing interested persons of the payment rates and payment procedures. This rule also does not allow for payment of handler services for reserve prunes released through the handler acceptance of diversion certificates if the released prunes have not been stored by the handler.

EFFECTIVE DATE: This final rule becomes effective May 12, 2003.

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, 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 final 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 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 final 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 final rule revises the regulations concerning compensation to handlers for services they perform pertaining to reserve prunes covered under the order. Under the order, handlers are compensated for such costs as inspection, receiving, storing, grading, and fumigation of reserve prunes held for the account of the Committee. In the administrative rules and regulations, the compensation rate has been \$25 per ton since the early 1970's. This rule establishes a procedure in the administrative rules and regulations that the Committee will follow to compute the level of handler payments that reflect current industry costs instead of having the compensation rate stated in the rule. The Committee will obtain current industry costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results will not be considered in the average. The average may be rounded to the nearest \$0.25. USDA will approve the updated compensation rate computed by the Committee. The Committee will announce the compensation rate for handling reserve prunes at the time the Committee reviews the industry statistics during the latter part of June and notify all handlers accordingly. Additional payment for handler services for reserve prunes held beyond the crop year of acquisition will be updated through a stated percentage of the handler compensation rate during the crop year of acquisition. The Committee unanimously recommended this action on November 29, 2001.

The order provides authority for volume regulation designed to promote orderly marketing conditions, to stabilize prices and supplies, and to improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order, including government purchases. Net

proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Definitions

Section 993.21c of the prune marketing order defines salable prunes as prunes which are free to be handled pursuant to any salable percentage established by the USDA pursuant to § 993.54.

Section 993.21d of the order defines reserve prunes as prunes which must be withheld in satisfaction of a reserve obligation arising from the application of a reserve percentage established by the USDA pursuant to § 993.54.

Section 993.54 of the order provides authority for USDA, based on recommendations by the Committee and supporting information supplied by the Committee, or from other available information, to establish salable and reserve percentages for dried prunes received by handlers during a crop year. The crop year begins August 1 and runs through July 31. When salable and reserve percentages are in effect, § 993.57 requires handlers to hold in their possession or under their control, for the account of the Committee, the quantity of prunes necessary to meet their reserve obligation.

Authority To Pay Handlers for Reserve Pool Services

Section 993.59 of the order specifies that handlers be compensated for necessary services performed in connection with reserve prunes including, but not limited to inspection, receiving, storing, grading, and fumigation. The payment is made on the tonnage of reserve prunes held by the handler for the account of the Committee, in accordance with a schedule of payments.

Handler Service Payments and Conditions for Reserve Prunes

Pursuant to § 993.59 of the order, details of the criteria and procedures for compensating prune handlers in connection with reserve prunes are established by regulation after recommendation by the Committee. They may be found in § 993.159 of the administrative rules and regulations. Since the early 1970's, the compensation rate has been \$25 per ton. The prune industry has not implemented salable and reserve percentages since 1971; therefore, the compensation rate does not reflect current costs. In recent years, the Committee has considered implementing a reserve.

The Committee normally meets during the end of June or early July to discuss marketing policy issues and decides whether to recommend implementing a reserve. The Committee met on November 29, 2001, and unanimously recommended revising the rules and regulations pertaining to the compensation rates for handler services in connection with reserve prunes. One change recommended establishes a procedure in the administrative rules and regulations for computing the compensation rates instead of having the rates stated in the rule. To aid in formulating the compensation rates, the Committee will obtain current costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results will not be considered in the average. The average may be rounded to the nearest \$0.25.

An updated compensation rate for handling reserve prunes during the crop year of acquisition will be computed when the Committee considers its annual marketing policy, but no later than July 20. This date could be extended up to 10 days, if warranted by a late crop. During marketing policy discussions, the Committee reviews, among other things, industry production and marketing statistics for dried prunes here and abroad, pricing information for domestic and foreign produced dried prunes, and handler costs for holding reserve prunes, including, but not limited to inspection, receiving, storing, grading, and fumigating prunes. Any recommended change in compensation rate will be reviewed, and will have to be approved by USDA. Upon approval, the Committee will inform all handlers of the changed compensation rate for the upcoming crop year. The process will be completed by the beginning of the crop year (August 1).

On November 29, 2001, the Committee also recommended that no payment for handler services be made for reserve prunes released by handler acceptance of diversion certificates under §§ 993.62 and 993.162, if the handler has not stored the prunes. For example, a handler may have a reserve obligation of 1,000 tons and received 900 tons worth of diversion certificates. The handler submits the 900 tons of diversion certificates to the Committee and requests that he be relieved of 900 tons of reserve prune obligation, leaving a reserve obligation of 100 tons. In this situation, the Committee will only reimburse the handler for reserve pool costs on the 100 tons.

The Committee intends to pay up to one-half the compensation rate (first

payment) as soon as practicable after the majority of the deliveries have been made and funds are available. During normal years, the first payment will occur after the second quarter of the crop year (usually during February) and quarterly payments will be made thereafter, as funds are available. The crop year runs from August 1 through July 31.

The Committee also recommends a number of administrative changes to the rules and regulations. They include: (1) Correcting a reference in § 993.159(a) from § 993.57 to § 993.59; (2) adding a provision in § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review costs for handler services in connection with reserve prunes pursuant to § 993.59, except that the Committee may extend this date by not more than 10 business days if warranted by a late crop; (3) adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) eliminating reference to personal pronouns and replacing them with a descriptive noun so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) regarding payments to handlers for services rendered in connection with reserve prunes held beyond the end of the crop year of acquisition also be updated. The regulations currently establish the reimbursement rate for storage and fumigation at \$2 per ton for the first quarter of the year beyond the crop year of acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that handlers be compensated at 10 percent of the yearly rate computed by the Committee and approved by USDA for the crop year of acquisition for the first quarter after the crop year of acquisition, rather than establishing a specific rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters after the crop year of acquisition at \$1.00, \$0.25, and \$0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the

second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages will add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and to inform handlers in accordance with paragraph (e) of § 993.159. Handlers will be compensated at that rate for use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are modified accordingly.

New paragraph (e) of § 993.159 will specify that the Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

Final Regulatory Flexibility Analysis

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 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 1,205 producers of dried prunes in the production area and approximately 24 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 whose annual receipts are less than \$5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under \$5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, will 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.

Pursuant to § 993.59 of the order, this final rule will allow the Committee to compute and announce the level of payments paid to handlers for services performed in connection with holding reserve prunes for the account of the Committee. Each handler holding reserve prunes for the account of the Committee will complete such services so that the Committee is assured that the prunes are maintained in good condition. The Committee will use the procedure specified in the administrative rules and regulations for computing the payment levels. This flexibility will allow for cost updates in a timely and efficient manner and at less cost to implement. This rule will allow the Committee to survey each of the prune handlers to obtain their costs for each category of expenses for handling reserve prunes listed in § 993.159 of the administrative rules and regulations. These costs will be averaged according to the formula in the rules and regulations. After reviewing and computing these costs, the Committee will submit the compensation rates to USDA for approval. After USDA approves the compensation rates, the payment rates will be publicized as required in paragraph (e) of this section. No payments for handler services will be made for reserve prunes released by handler acceptance of diversion certificates if the handler has not stored the released dried prunes for the account of the Committee.

The Committee also recommended a number of administrative changes to the rules and regulations. They include: (1) Correcting a section reference in § 993.159(a) from § 993.57 to § 993.59; (2) Adding a provision to § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review the costs incurred by handlers in connection with holding reserve prunes for the account of the Committee, except that the Committee may extend this date up to 10 business days if warranted by a late crop; (3) Adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) Adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) Eliminating references to personal pronouns and replacing them with descriptive nouns so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) also be updated and be formula based. These provisions regard payments to handlers for services (storage and fumigation) rendered in connection with reserve prunes held beyond the crop year of acquisition. The regulations currently establish the reimbursement rate at \$2 per ton for the first quarter of the crop year after acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that the handler payment rate for the first quarter of the crop year after acquisition be 10 percent of the yearly rate for the crop year of acquisition, rather than establishing a specific payment rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters of the crop year following acquisition at \$1.00, \$0.25, and \$0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages will add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for

handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and to inform handlers in accordance with paragraph (e) of § 993.159. Handlers will be compensated at that rate for the use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are modified accordingly.

New paragraph (e) of § 993.159 will specify that the Committee give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity will be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment report submitted to USDA for review and approval. The Committee will notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communication.

Regarding the impact of this rule on affected entities, the order provides that handlers shall store reserve prunes for the account of the Committee. Net proceeds from sales of such reserve prunes are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in inspecting, receiving, storing, grading, fumigation, and handling reserve prunes. Currently, handlers are compensated at a rate of \$25 per ton for reserve prunes acquired during a particular crop year. The \$25 per ton rate has been the compensation rate since the early 1970's. Costs have increased dramatically in the past 30 years. The Committee recommended that a procedure be added to the administrative rules and regulations to allow the Committee to adjust the compensation rate for handling reserve prunes in a timely manner instead of specifying them in the rules and regulations. The industry meets during the end of June or early July to discuss marketing policy issues, including reserve pooling, for the next crop year, which begins August 1. A procedure in

the administrative rules and regulations will allow the Committee to update the compensation rate during a particular crop year in a timely, efficient, and less expensive manner. The computed payment rates will be recommended by the Committee and approved administratively by USDA. After USDA approval the payment rates will be publicized as required in § 993.159(e).

This rule will allow the Committee to reimburse handlers their actual costs incurred in holding reserve prunes for the account of the Committee. While this may reduce net proceeds to the equity holders, it shifts the costs to the appropriate entities. There should be no disproportionate impact of this action on small entities. Costs of the reserve pool are taken out of the proceeds of the pool and each equity holder shares in the expenses based on their proportionate share of prunes in the reserve pool.

The Committee discussed other alternatives to this change on November 29, 2001, including doing nothing. However, that will leave reserve pooling as a less viable supply management option due to the outdated schedule of handler payments. Another option discussed was to update the data for a given crop year; however, the survey and formula procedure was considered more viable.

This action will allow the Committee to survey prune handlers to obtain their costs applicable to holding reserve prunes for the account of the Committee. Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data to administer the program. This rule will impose some additional reporting and recordkeeping requirements on both small and large California dried prune handlers. In order to help the Committee formulate the compensation rate for handler services in connection with reserve prunes, current costs will be obtained through a survey voluntarily submitted by dried prune handlers. The average costs will be computed based on the number of handlers participating in the survey. It is estimated that it will take an average of 15 minutes per response to collect this information. If all 24 handlers participate in the survey, the additional burden created is estimated to be 6 hours. However, the Committee believes that the burden to complete a handler compensation survey will be outweighed by obtaining and using updated cost data to determine the handler compensation for handling reserve prunes.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.

Chapter 35), AMS is seeking approval for the additional burden imposed by the Handler Compensation Survey. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581-0178, Vegetable and Specialty Crop Marketing Orders. As noted in the initial regulatory flexibility analysis, the USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, October 15, 2002, (67 FR 63568). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. The rule provided a comment period that ended December 16, 2002. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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.

After consideration of all relevant matter 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.

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 993.159 is revised to read as follows:

993.159 Payments for services performed with respect to reserve tonnage prunes.

(a) *Payment for crop year of acquisition.* Each handler shall, with respect to reserve prunes held by the handler for the account of the Committee pursuant to § 993.59, be paid at a rate computed by the Committee (natural condition rate) for necessary services rendered by the handler in connection with such prunes so held during all or any part of the crop year in which the prunes were physically received from producers or dehydrators. Each handler holding reserve prunes shall perform such services to assure that the prunes are maintained in good condition. No payment will be made for prunes released by handler acceptance of diversion certificates if the handler has not stored the released prunes. The rate of payment shall be established by the Committee and must be approved by the Secretary. Following such approval, it shall be publicized as required in paragraph (e) of this section.

(1) On or before July 20 of each crop year when the Committee recommends a reserve pool (except the Committee may extend this date by not more than ten business days if warranted by a late crop), the Committee shall hold a meeting to review the costs for necessary services rendered by handlers in connection with reserve prunes.

(2) Such amount shall, together with the additional payments, as provided in this section, be in full payment for the costs incurred in connection with but not be limited to the following services: Inspection, receiving, storing, grading, fumigation, and handling. The costs include, but are not limited to:

(i) Acquisition costs, which include those for salaries, commission, or brokerage fees, transportation and handling between plants and receiving stations, inspection, and other costs, including container expenses, incidental to acquisition or storage;

(ii) Direct labor costs, which include those for weighing, receiving and stacking, grading, preliminary sorting and storing (including that performed by the handler at the receiving station), and loading for shipment or other delivery to the Committee or its designee;

(iii) Plant overhead costs, which include those for supervision, indirect labor, fuel, power and water, taxes and insurance on facilities, depreciation and rent, repairs and maintenance (clean-up, etc.), factory supplies and expense, and

employee benefits (payroll taxes, compensation insurance, health insurance, pension plan contributions, vacation pay, holiday and other paid days off, and other such costs).

(3) The Committee shall survey all handlers to obtain their costs for services performed with respect to reserve tonnage prunes. The Committee will compute the average industry cost for holding reserve pool prunes by adding each handlers' cost data, and dividing the composite figure by the number of handlers participating in the survey. In the event that any handler's cost data is too low or too high, the Committee may choose to exclude the high and low data in computing an industry average. The industry average costs may be rounded to the nearest \$0.25. The industry average costs computed by the Committee shall be publicized by the Committee pursuant to paragraph (e) of this section.

(b) *Reimbursement for required insurance costs.* Each handler holding reserve prunes for the account of the Committee shall maintain proper insurance thereon, including fire and extended coverage, in valuations (according to grade and/or size) established by, or acceptable to, the Committee for the particular crop year. The Committee shall reimburse the handler for the actual costs of such insurance. Prior to the receipt of reserve prunes at the beginning of each crop year, the handler shall certify to the Committee and the Secretary of Agriculture, on Form PMC 4.5, that such handler has a fire and extended coverage policy fully insuring all reserve prunes received by the handler during such crop year. Such certification shall contain the following information:

(1) The name and address of the handler;

(2) The location(s) where reserve prunes will be held for the account of the Committee and the premium rate per \$100 value per annum at each location;

(3) The value per ton at which the reserve prunes are insured; and

(4) The name and address of the insurance underwriter.

(c) *Certain additional payments in connection with the holding of reserve prunes for the account of the Committee.*

(1) Whenever a handler is directed by the Committee to move and dump containers or reserve prunes held by the handler for the account of the Committee for the purpose of causing an inspection to be made of the prunes as provided in § 993.75, but without taking delivery of the prunes at that time, the

handler shall be paid for such services at a rate per ton (natural condition weight) determined by the Committee and approved by the Secretary of Agriculture. Such reimbursement rate shall be computed as described in paragraph (a)(3) of this section and publicized as required in paragraph (e) of this section.

(2) Additional payment for reserve tonnage prunes held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding reserve prunes shall complete such services so that the Committee is assured that the prunes are maintained in good condition.

(i) For storage and necessary fumigation, each handler shall be compensated at a per ton rate announced by the Committee in accordance with paragraph (a)(3) of this section:

(A) For all or any part of the first 3 months of the succeeding crop year, the rate per ton shall be 10 percent of the yearly rate established for the crop year of acquisition;

(B) For all or any part of the second 3 months of the succeeding crop year, the rate per ton shall be 50 percent of the rate established for the first 3 months of the succeeding crop year;

(C) For all or any part of the third 3 months of the succeeding crop year, the rate per ton shall be 25 percent of the rate established for the first 3 months of the succeeding crop year;

(D) For all or any part of the fourth 3 months of the succeeding crop year, the rate per ton shall be 25 percent of the rate established for the first 3 months of the succeeding crop year;

(ii) For all or part of the succeeding crop year, the Committee shall determine the per ton rate for bin rental within the industry and announce bin rental rate to the industry pursuant to paragraph (e) of this section.

(iii) For insurance as prescribed in paragraph (b) of this section.

(d) *Certain additional payments in connection with the delivery of reserve prunes to the Committee or its designee.*

(1) Whenever a handler is directed by the Committee to deliver to it or its designee reserve prunes in natural condition, the Committee shall furnish the handler with the containers in which to deliver the prunes, or reimburse the handler, at cost, for any containers which the handler furnishes pursuant to an agreement with the Committee.

(2) Whenever the Committee arranges with a handler for the reserve prunes delivered to it or its designee to be in processed and packaged condition, the Committee shall reimburse the handler

at the agreed rate, determined by the Committee to be reasonable, for the processing, container, and packaging costs.

(e) The Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

Dated: April 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-8800 Filed 4-9-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-134-AD; Amendment 39-13110; AD 2003-07-14]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas DC-10-30 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to a single McDonnell Douglas Model DC-10-30 airplane, that requires repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of connectors in the fuel boost/transfer pump circuit, which could result in a fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective May 15, 2003.

The incorporation by reference of Boeing Alert Service Bulletin DC10-28A228, including Appendix, Revision 02, dated December 7, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 12, 2002 (67 FR 45053, July 8, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627-5263; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to a single McDonnell Douglas Model DC-10-30 airplane was published in the **Federal Register** on January 3, 2003 (68 FR 320). That action proposed to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system.

The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

This AD applies to one McDonnell Douglas Model DC-10-30 airplane and that airplane is of U.S. registry. It will take approximately 65 work hours to accomplish the required tests and inspections on that airplane, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be \$3,900, per test or inspection cycle.

The cost impact figure discussed above is based on assumptions that the operator has not yet accomplished the requirements of this AD action, and that the operator would not accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory