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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. FV04-993-1 PR]

Dried Prunes Produced in California; Undersized Regulation for the 2004-05 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2004-05 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 excess of dried prunes by approximately 4,300 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by April 23, 2004, 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; fax: (202) 720-8938; or e-mail: moab.docketclerk@usda.gov. or <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in

the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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 proposal 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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.

Summary

This proposal invites comments on changes to the undersized regulation in § 993.49(c) of the prune marketing order for the 2004-05 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening would be increased from $2\frac{3}{32}$ to $2\frac{4}{32}$ of an inch in diameter; and for non-French prunes, the opening would be increased from $2\frac{8}{32}$ to $3\frac{0}{32}$ of an inch in diameter. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. This rule would be in effect from August 1, 2004, through July 31, 2005, and was unanimously recommended by the Committee at a December 11, 2003, meeting.

Authority for Undersized Regulations as a Volume Control

Section 993.19b of the prune marketing order defines undersized prunes as prunes, which pass freely through a round opening of a specified diameter.

Section 993.49(c) of the prune marketing order establishes an undersized regulation of $2\frac{3}{32}$ of an inch for French prunes and $2\frac{8}{32}$ of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the USDA 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 USDA 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 prune openings prescribed in § 993.49(c) to permit undersized regulations using openings of $\frac{23}{32}$ or $\frac{24}{32}$ of an inch for French prunes and $\frac{28}{32}$ or $\frac{30}{32}$ of an inch for non-French prunes.

History of Undersized Regulations Used as a Volume Control

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by USDA at $\frac{23}{32}$ of an inch in diameter for French prunes and $\frac{28}{32}$ 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). In addition, the Committee recommended and USDA established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned $\frac{23}{32}$ and $\frac{28}{32}$ inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at $\frac{24}{32}$ of an inch for French prunes and $\frac{30}{32}$ 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.

The objective of the undersized prune 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, including the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at $\frac{24}{32}$ of an inch for French prunes, and $\frac{30}{32}$ of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998).

With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at $\frac{24}{32}$ of an inch in diameter for French prunes and $\frac{30}{32}$ of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000, or until the undersized prunes from that crop year were disposed of as required.

Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at $\frac{24}{32}$ of an inch in diameter for French prunes and $\frac{30}{32}$ of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001, or until the undersized prunes from that crop year were disposed of as required.

Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at $\frac{24}{32}$ of an inch in diameter for French prunes and $\frac{30}{32}$ of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002, or until the undersized prunes are disposed of under the marketing order.

With supplies expected to remain excessive in 2002–03, the Committee again unanimously recommended continuing with an undersized prune regulation at $\frac{24}{32}$ of an inch in diameter for French prunes and $\frac{30}{32}$ of an inch in diameter for non-French prunes. These diameter openings were established in § 993.409 (67 FR 31717, May 10, 2002) and made effective from August 1, 2002, through July 31, 2003, or until the undersized prunes are disposed of under the marketing order.

Because supplies were not expected to remain excessive in 2003–04, the Committee did not recommend continuing with the undersized regulation from August 1, 2003 through July 31, 2004.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural condition tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop year increased to 65,131 natural condition tons. This increase was due to a larger 1999–2000 crop size of about 171,754 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop year increased to 100,829 natural condition tons. This increase was due to a larger 2000–01 crop size of about 214,803 natural condition tons and a modest increase in shipments from a severely reduced shipment base during the 1999–2000 crop year. The carryin for the 2002–03 crop year decreased to 63,536 natural condition tons. This decrease was due to a smaller 2001–02 crop size of about 142,151 natural condition tons and a modest decrease in shipments from the shipment base during the 2000–01 crop year.

According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on December 11, 2003, the Committee unanimously recommended continuing an undersized prune regulation at $\frac{24}{32}$ of an inch in diameter for French prunes and $\frac{30}{32}$ of an inch in diameter for non-French prunes during the 2004–05 crop year for supply management purposes. This regulation would be in effect from August 1, 2004, through July 31, 2005, or until the undersized prunes from 2004–05 are properly disposed of as required under the marketing order.

The Committee estimated that there would be an excess of about 25,925 natural condition tons of dried prunes as of July 31, 2004. This proposed rule

would remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99, 1999–2000, 2000–01, 2001–02, and 2002–03 crop years. As mentioned earlier, an undersized prune regulation was not implemented last crop year (2003–04). It is estimated that approximately 4,300 natural condition tons of small prunes would be removed from human consumption channels during the 2004–05 crop year as a result of this rule. This would leave sufficient prunes to fill domestic and foreign trade demand during the 2004–05 crop year, and provide an adequate carryout on July 31, 2005, 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 2004–05 crop is about 39,000 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 worldwide oversupply that is expected to continue growing this decade (estimated at 305,115 natural condition tons by the year 2007); (3) a continuing oversupply situation in California caused by decreased shipments and continued large production from the plantings during the 1990's with higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) low producer prices.

The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1991–92 through the 2002–03 crop years. The Committee concluded that it has to resume utilizing the undersized prune volume regulation in order to accelerate the return to a more balanced supply/demand situation in the interest of the California dried prune industry. In addition, the Committee supported other efforts to reduce burdensome supplies through an industry-funded tree removal program that was initiated in the fall of 2001. Through this program, over 4,700 bearing acres of prune plum trees were removed. At the request of the Committee, the USDA implemented a USDA funded tree removal program, wherein growers would be encouraged to remove prune plum trees. Through the USDA tree removal program, 13,248 bearing acres of prune plums were removed. While the industry successfully removed over

18,000 bearing acres of prune plum trees through the USDA and industry tree removal programs, prune production still exceeds demand.

Adding to the U.S. oversupply of prunes are imports of prune juice, which increased by 45 percent last year. The proposed change to the undersized regulation for the 2004–05 crop year will help bring supplies more in line with market needs.

Despite these supply management efforts, the industry's oversupply plight may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 9,000 acres during the 2002–03 crop year. The 1996–97 through 2003–04 yields have ranged from 1.3 to 2.6 tons per acre. Over the last 10-years, the average was 2.3 tons per acre.

The 2003–04 dried prune crop is reported at 176,000 natural condition tons by the National Agricultural Statistics Service (NASS). The Committee is expecting another large crop of prunes during the 2004–05 crop year because of new bearing acreage coming into production and higher average yields.

Since the late 1990's, producers have not been able to recover the costs of drying, hauling, and paying the State of California producer promotion expenses on every ton of size $2\frac{4}{32}$ diameter dried prunes they delivered. The 1997–98 crop year producer prices for $2\frac{4}{32}$ of an inch in diameter French prunes were about \$40–\$50 per ton. This is about \$260–\$270 per ton below the cost of drying a ton of $2\frac{4}{32}$ diameter French prunes at a 4 to 1 dry-away ratio, the cost of hauling the prune/plums from the orchard to the dehydrator, and the assessments paid by producers under the California marketing order for promotion. During the 2003–04 crop year, producer prices are expected to be about \$40 per ton for the $2\frac{4}{32}$ of an inch diameter French prunes, which is about \$249 per ton below the cost of drying, hauling, and State promotion expenses. Low producer prices for all sizes of dried prunes are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this proposal is to eliminate small sizes which have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average

producer returns currently are below the cost of production and the proposal would assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, 2001–02 and 2002–03 undersized prune rules of $2\frac{4}{32}$ of an inch for French prunes and $3\frac{0}{32}$ of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2003, was 32,619 natural condition tons. As noted earlier, during the 2003–04 crop year, the Committee did not implement an undersized prune volume regulation. The Committee believes that the same undersized prune regulation that was implemented for the 1998–99, 1999–2000, 2000–01, 2001–02 and 2002–03 crop years should be implemented during the 2004–05 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2004–05 prune crop, and more quickly bring supplies in line with demand. 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 $2\frac{3}{32}$ and $2\frac{8}{32}$ 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. The season average price received by prune growers ranged from 32 percent to 54 percent of parity during the 1995 through 2002 seasons. As discussed later, the average grower price for prunes during the 2004–05 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate in reference to parity.

Initial 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 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 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 1,100 producers of dried prunes in the production area and approximately 22 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 8 out of 22 handlers (36.4 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fourteen of the 22 handlers (63.6 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 1,100 total producers, would 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.

As recommended by the Committee, this proposed rule would establish an undersized prune regulation of $2\frac{4}{32}$ of an inch in diameter for French prunes and $3\frac{0}{32}$ of an inch in diameter for non-French prunes for the 2004–05 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 larger screen openings that were in place for 2002–03 are the same as proposed for 2004–2005 and are expected to remove 4,300 tons of dried prunes from the excess marketable supply.

The Committee estimates carryout inventories on July 31, 2004, to be 64,626 tons. This is 25,925 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, average 2003–04 grower prices are reported at \$730 per ton by NASS and are lower than for the 2002–03 year, when growers received an average of \$810 per ton. The \$730 average grower price is substantially

below total cost of production of \$1,141 per ton and the total variable cost of production of \$838 per ton, based on a 2001 study by the University of California Cooperative Extension reflecting a 2.5 ton production per acre in Sacramento County.¹ This means that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels above total variable costs.

Tree removal programs (industry and federal) have been implemented by the industry. These programs have been successful in removing over 18,000 bearing acres from production, thus reducing marketable production. Even with these tree removal programs, total available supply is estimated at 224,626 tons for the 2004–05 crop year (marketable production estimated at 160,000 tons and 64,626 tons of carryin inventories). Total demand is estimated to not exceed 167,769 tons, resulting in carryout inventories of 56,857 tons. This remains in excess of desirable inventories of 39,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of maintaining these inventories are deducted from grower payments.

An undersized prune regulation would remove about 4,300 tons from the total available supply. An econometric model shows that an undersized prune rule resulting in eliminating 4,300 tons from marketable production would strengthen growers' prices modestly by \$7.59 per ton. This price is still expected to be less than the cost of production for 2004–2005 estimated at \$1,141 per ton.

Because the benefits and costs of the proposed action would be directly proportional to the quantity of $2\frac{4}{32}$ screen French prunes and $3\frac{0}{32}$ screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the proposal. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the

prunes produced are homogeneous enough that the proposal should not be viewed as inequitable by large and small producers 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 disproportionately impact small handlers or producers. The only additional costs on producers and handlers expected from the increased openings would be the disposal of additional tonnage (now estimated to be about 4,300 tons) to nonhuman consumption outlets. These 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 December 11, 2003, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers expecting to lose \$249 on every ton of small-sized prunes delivered to handlers during the 2004–05 crop year. Producer prices for $2\frac{4}{32}$ screen French prunes are expected to be \$40 per ton for the 2003–04 crop year. The cost of drying a ton of such prunes is \$260 per ton with a 4 to 1 dry-away ratio, transportation from the orchard to the dehydrator is at least \$20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is \$9.33 per ton for a total cost of about \$289.33 per ton. Thus, a producer could save about \$249 per ton by not drying prune plums and not delivering dried prunes $2\frac{4}{32}$ of an inch in diameter to handlers.

Utilizing data provided by the Committee, USDA 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 could 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 4,300 tons of small-sized dried prunes during the 2004–05 crop year from the

¹The study was prepared by Richard P. Buchner, John P. Edstrom, William H. Krueger, William H. Olson, Wilbur O. Reil, Karen M. Klonsky, and Richard L. DeMoura.

marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 71,320 tons of natural condition prunes on July 31, 2003, the end of the 2002–03 crop year. The 71,320 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop dried prunes. Currently, it is about 39,000 natural condition tons. This leaves a 2003–04 inventory surplus of about 32,000 tons. The undersized regulation will help reduce the surplus, but the anticipated large 2004–05 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1994–95 through the 2002–2003 crop years, the season average price received by the producers ranged from a high of \$1,040 per ton in the 1995–1996 crop year to a low of \$726 per ton during the 2001–02 crop year. The season average price received by producers during that 7-year period ranged from 32 percent to 54 percent of parity. Based on the latest available data, the season average producer price for the 2004–05 season is expected to be near the 2003–04 season's price, which is projected to be \$730 per ton.

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 is needed to accelerate that reduction. A second alternative discussed was to advance to a $2\frac{5}{32}$ screen undersized regulation for French prunes. However, handlers expressed concern that this would reduce the amount of manufacturing prunes (approximately 4,000 tons) available for the manufacture of prune juice and concentrate. This could increase the prices of these products. The first initiative was not supported because it would not specifically eliminate the smallest, least valuable prunes, which are in oversupply.

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 proposed 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 December 11, 2003, 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. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee are monitoring the supply situation, and this proposed rule reflects their deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

The Committee requested a comment period through April 23, 2004, to allow interested persons to respond to this proposal. This comment period should give the Committee time to observe the bloom period during the spring and industry shipment trends during the year and allow sufficient time to comment to the Department concerning any changes that are deemed appropriate. 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.

§ 993.409 [Removed]

2. Section 993.409 is removed.

3. A new § 993.410 is added to read as follows:

§ 993.410 Undersized prune regulation for the 2004–05 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2004–05 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, $2\frac{4}{32}$ of an inch in diameter; for non-French prunes, $3\frac{0}{32}$ of an inch in diameter.

Dated: March 19, 2004.

A. J. Yates,

Administrator, Agriculture Marketing Service.

[FR Doc. 04–6704 Filed 3–25–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–316–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that currently requires repetitive inspections for discrepancies of the upper and lower areas of the backup struts in the left and right nacelles; and corrective actions, if necessary. This action would require repetitive inspections for cracks in the lower areas of the backup struts, and corrective action if necessary. This action would also require the eventual replacement of the backup struts with new, improved struts, which would terminate the repetitive inspections. The actions specified by the proposed AD are intended to prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe redundancy in the design of the nacelle