

# Proposed Rules

Federal Register

Vol. 70, No. 23

Friday, February 4, 2005

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. FV05-993-1 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2004-05 and subsequent crop years from \$4.00 to \$6.00 per ton of salable dried prunes. The committee locally administers 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 committee recommended a higher assessment rate because the 2004-05 crop is very small, and the higher assessment rate is needed to generate funds to meet program expenses and provide an adequate financial reserve. The crop year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by March 7, 2005.

**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](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be

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

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, or Terry Vawter, 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, 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 110 and Marketing 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 (USDA) 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 proposed herein would be applicable to all assessable dried prunes beginning August 1, 2004, 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 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the committee for the 2004-05 and subsequent crop years from \$4.00 to \$6.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California dried prunes. They are familiar with the committee's needs and with the costs 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.

The committee recommended an assessment rate of \$4.00 per salable ton of prunes for the 2004-05 and subsequent crop years on June 23, 2004. USDA approved that assessment rate and it was published in the **Federal Register** on September 28, 2004 (69 FR 55733). That assessment rate was to continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA. At the time of the June 23, 2004, meeting, the

prune crop was expected to be 68,950 salable tons.

The committee met again on December 8, 2004, and unanimously recommended an increased assessment rate of \$6.00 per ton of salable dried prunes and an increase in 2004–05 expenditures to \$283,218. At its June 23, 2004, meeting, the committee recommended expenditures totaling \$275,800. The proposed assessment rate of \$6.00 per ton is \$2.00 higher than the rate currently in effect, and \$4.00 per ton more than the assessment rate in effect during the 2003–2004 crop year.

The committee recommended a higher assessment rate because a very small crop was received by handlers during the crop year. The salable prune production this crop year is expected to be only 47,203 tons, the smallest crop since 1918. The assessment rate of \$6.00 per ton is expected to provide sufficient funds for committee operations this year and provide an adequate financial reserve.

In comparison, the budgeted expenditures for the 2003–2004 crop year were \$322,022 and the assessment rate was \$2.00 per salable ton of prunes, based upon an estimated crop of 170,500 salable tons.

The following table compares the proposed major budget expenditures recommended by the committee on December 8, 2004, and major budget expenditures in the previously-approved 2004–05 budget.

Budget expense categories	Approved budget 2004–05	Proposed budget 2004–05
Total Personnel Salaries .....	\$181,335	\$178,335
Total Operating Expenses .....	84,931	75,431
Reserve for Contingencies .....	9,534	29,452

The assessment rate recommended by the committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated to be 47,203 salable tons, which should provide \$283,218 in assessment income. Income derived from handler assessments is expected to be adequate to cover budgeted expenses.

The committee is authorized to use excess assessment funds from the 2003–04 crop year (currently estimated at \$96,702) for up to 5 months beyond the end of the crop year to meet 2004–05 crop year expenses. At the end of the 5-month period, the committee must refund or credit excess funds to handlers, as prescribed by § 993.81(c).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2004–05 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those whose annual receipts are less than \$750,000, and small agricultural service firms as those whose annual receipts are less than \$5,000,000.

Eight of the 22 handlers (36.4 percent) shipped over \$5,000,000 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 of dried 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.

This rule would increase the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent crop years from \$4.00 to \$6.00 per ton of salable dried prunes. The committee unanimously recommended revised 2004–05 expenditures of \$283,218 and an increased assessment rate of \$6.00 per ton of salable dried prunes at the meeting on December 8, 2004. The recommended expenditures are slightly higher than the Committee's initial estimate of \$275,800 for 2004–05. The proposed assessment rate of \$6.00 per ton is \$2.00 higher than the current rate. The quantity of salable dried prunes for the 2004–05 crop year is now estimated at 47,203 salable tons. The Committee's earlier estimate was 68,950 salable tons. The \$6.00 rate should provide \$283,218 in assessment income (6 × 47,203) and be adequate to meet this year's expenses.

The following table compares the proposed major budget expenditures recommended by the committee on December 8, 2004 and major budget expenditures in the previously-approved 2004–05 budget.

Budget expense categories	Approved budget 2004–05	Proposed budget 2004–05
Total Salaries .....	\$181,335	\$178,331
Operating Expenses	84,931	75,431
Reserve for Contingencies .....	9,534	29,452

Prior to arriving at its budget of \$283,218, the committee considered information from various sources, such as the committee's Executive Subcommittee. An alternative to this action would be to continue with the \$4.00 per ton assessment rate. However, an assessment rate of \$4.00 per ton in combination with the estimated crop of 47,203 salable tons would not generate sufficient monies to fund all the budget items for 2004–05 and provide an adequate financial reserve. The assessment rate of \$6.00 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes.

The committee is authorized to use excess assessment funds from the 2003–04 crop year (currently estimated at \$96,702) for up to 5 months beyond the end of the crop year to fund 2004–05 crop year expenses. At the end of the 5-month period, the committee must

refund or credit excess funds to handlers, as prescribed by § 993.81(c). Anticipated assessment income collected during 2004–05 would be adequate to cover authorized expenses.

The grower price for the 2004–05 crop year is expected to average about \$750 per salable ton of dried prunes. Based on an estimated 47,203 salable tons of dried prunes, assessment revenue during the 2004–05 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived 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 8, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2004–05 crop year began on August 1, 2004, and the marketing order requires that the rate of assessment for each crop year apply to all assessable prunes handled during such crop year; (2) the committee needs to have sufficient

funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

#### PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

##### § 993.347 Assessment rate.

On and after August 1, 2004, an assessment rate of \$6.00 per ton is established for California dried prunes.

Dated: January 31, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–2153 Filed 2–3–05; 8:45 am]

**BILLING CODE 3410–02–P**

#### NATIONAL CREDIT UNION ADMINISTRATION

##### 12 CFR Chap. VII

#### Request for Burden Reduction Recommendation; Safety and Soundness and Anti-Money Laundering Regulations; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of regulatory review; request for comments.

**SUMMARY:** The NCUA Board is continuing its review of its regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally-insured credit unions pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, NCUA requests comments and suggestions on ways to reduce burden in rules that govern safety and soundness and anti-money laundering, consistent with our statutory obligations. All comments are welcome.

We will analyze the comments received and propose burden reducing changes to our regulations where appropriate. Some suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider the suggestions in recommending appropriate changes to Congress.

**DATES:** Comment must be received on or before May 5, 2005.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Fourth EGRPRA Notice” in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

**Public inspection:** All public comments are available on the agency's Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to [OGC\\_Mail@ncua.gov](mailto:OGC_Mail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6562.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

NCUA seeks public comment and suggestions on ways it can reduce regulatory burdens consistent with our statutory obligations. Today, we request input to help identify which requirements in two regulatory categories—Safety and Soundness and Anti-Money Laundering—are outdated, unnecessary, or unduly burdensome.