

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV05-993-5 FIR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2005–06 and subsequent crop years from \$6.00 to \$0.65 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 crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; 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 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 issued herein will be applicable to all assessable dried prunes beginning August 1, 2005, 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,

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provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the committee for the 2005–06 and subsequent crop years from \$6.00 to \$0.65 per ton of salable dried prunes handled.

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 at least one public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent crop years the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminate by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 30, 2005, and unanimously recommended a decreased assessment rate of \$0.65 per ton of salable dried prunes and a decreased level of expenses for the 2005–06 crop year. The committee recommended a total budget of \$89,090. The assessment rate of \$0.65 per ton of salable dried prunes is \$5.35 lower than the rate in effect prior to implementation of the interim final rule.

The committee recommended a lower assessment rate based on an estimated production of 104,500 tons of salable dried prunes. The committee's expenses are being reduced significantly from the 2004–05 budget as the result of the August 1, 2005, suspension of the reporting and handling requirements under the order. The assessment rate of \$0.65 per ton of salable dried prunes plus excess funds from the 2004–2005 crop year are expected to provide sufficient funds for the committee's reduced activities.

In comparison, the actual expenditures for the 2004–05 crop year

were \$284,000 and the assessment rate was \$6.00 per ton of salable prunes, based upon 47,203 salable tons.

The following table compares the major budget expenditures recommended by the committee on June

30, 2005, and major budget expenditures in the 2004–05 budget.

Budget expense categories	2004–05	2005–06
Total Personnel Salaries	\$208,335	\$45,945
Total Operating Expenses	54,500	16,755
Reserve for Contingencies	21,165	26,390

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 104,500 salable tons, which should provide \$67,925 in assessment income. Income derived from handler assessments plus excess funds from the 2004–2005 crop year should be adequate to cover budgeted expenses. The committee is authorized to use excess assessment funds from the 2004–05 crop year (currently estimated at \$13,000) for up to 5 months beyond the end of the crop year to meet 2005–06 crop year expenses. At the end of the 5 months, the committee either refunds or credits excess funds to handlers (§ 993.81(c)).

The assessment rate will 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 is effective for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or 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 2005–06 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

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 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 \$6,000,000.

Eight of the 22 handlers (36.4 percent) shipped over \$6,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Fourteen of the 22 handlers (63.6 percent) shipped under \$6,000,000 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 producers with annual incomes over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

The producer price for the 2005–06 crop year is expected to average between \$1,500 and \$1,600 per ton of salable dried prunes. Based on an estimated 104,500 salable tons of dried prunes, assessment revenue as a percentage of producer prices during the 2005–06 crop year is expected to be between .041 and .043 percent.

This rule continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2005–06 and subsequent crop years from \$6.00 to \$0.65 per ton of salable dried prunes. The committee unanimously recommended a 2005–06 total budget of \$89,090 and a decreased assessment rate of \$0.65 per ton of salable dried prunes at the meeting on June 30, 2005. The recommended budget of \$89,090 is significantly reduced for the 2005–06 crop year as compared to previous crop years. The assessment rate of \$0.65 per ton of salable dried prunes is \$5.35 lower than the previous rate. The quantity of salable dried prunes for the 2005–06 crop year is now estimated at 104,500 salable tons.

The following table compares the major budget expenditures recommended by the committee on June 30, 2005, and major budget expenditures in the 2004–05 budget.

Budget expense categories	2004–05	2005–06
Total Personnel Salaries	\$208,335	\$45,945
Total Operating Expenses	54,500	16,755
Reserve for Contingencies	21,165	26,390

Prior to arriving at its budget of \$89,090, 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 \$6.00 per ton assessment rate. However, an assessment rate of \$0.65 per ton of salable dried prunes and excess funds from the 2004–2005 crop year will

provide enough income is to fund the committee's reduced activities after the August 1, 2005, suspension of the handling and reporting requirements.

Therefore, the Executive Subcommittee and committee agreed that \$0.65 per ton of salable dried prunes is an acceptable assessment rate. The committee is authorized to use excess assessment funds from the 2004–05 crop year (currently estimated at \$13,000) for up to 5 months beyond the end of the crop year to meet 2003–04 crop year expenses. At the end of the 5 months, the committee either refunds or credits excess funds to handlers (\$ 993.81(c)).

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 June 30, 2005, meeting was a public meeting and all entities, both large and small, were encouraged to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

An interim final rule concerning this action was published in the **Federal Register** on September 15, 2005. The committee staff mailed copies of the rule to all committee members, alternates, and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended November 14, 2005. Three comments were received. Two comments were not relevant to the rulemaking action, and one comment supported the reduced assessment rate for prunes.

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

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

- Accordingly, the interim final rule amending 7 CFR part 993 which was published at 70 FR 54469 on September 15, 2005, is adopted as a final rule without change.

Dated: December 22, 2005.

Lloyd C. Day,
Administrator, Agricultural Marketing Service.

[FR Doc. 05-24544 Filed 12-28-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-298-AD; Amendment 39-14354; AD 2005-22-10 R1]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A320-111 Airplanes, and Model A320-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Airbus Model A320-111 airplanes, and Model A320-200 series airplanes. That AD currently requires a detailed inspection of the tail cone triangle to determine its position, and corrective actions if necessary. This document corrects the applicability by specifying that the AD affects only airplanes identified in Airbus Service Bulletin A320-27-1132, Revision 01, dated June 19, 2002. This correction is necessary to ensure that only affected airplanes are subject to the requirements of the AD.

DATES: Effective December 5, 2005.

The incorporation by reference of a certain publication listed in the regulations was approved previously by the Director of the Federal Register as of December 5, 2005 (70 FR 62232, October 31, 2005).

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2141; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: On October 20, 2005, the Federal Aviation Administration (FAA) issued AD 2005-22-10, amendment 39-14354 (70 FR 62232, October 31, 2005), which applies to certain Airbus Model A320-111 airplanes, and Model A320-200 series airplanes. That AD requires a detailed inspection of the tail cone triangle to determine its position, and corrective actions if necessary. That AD was prompted by a report that the tail cone triangles were not installed properly on certain airplanes during production, resulting in possible mis-rigged elevator servo-controls. The actions required by that AD are intended to prevent excessive vibrations of the elevators, which could result in reduced structural integrity and reduced controllability of the airplane.

Need for the Correction

Information obtained recently by the FAA indicates that we inadvertently changed the applicability from that specified in the Notice of Proposed Rulemaking by omitting from the statement of applicability of AD 2005-22-10 that airplanes affected by the AD are those identified in Airbus Service Bulletin A320-27-1132, Revision 01, dated June 19, 2002.

The FAA has determined that a correction to AD 2005-22-10 is necessary. The correction will revise the applicability to include a reference to Airbus Service Bulletin A320-27-1132, Revision 01, dated June 19, 2002.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 5, 2005.

Since this action reduces the number of airplanes affected by revising the applicability, it has no adverse economic impact and imposes no additional burden on any person.