

- (1) The beginning inventory of the handler by size and container type;
- (2) The quantity of fruit the handler lost in repack and repacked into other container types;
- (3) The total domestic and export shipments of the handler by size and container type; and
- (4) Any other adjustments which increase or decrease posted handler inventory.

\* \* \* \* \*

(d) *KISS Price/Shipment report.* Each handler who ships 100,000 or more trays, or the equivalent thereof, per season, shall file the KISS Price/Shipment report with the committee. Handlers are not required to report organic kiwifruit shipments on this report. The handler shall file the report weekly following the first week he or she makes shipments and shall continue filing reports until he or she submits a final report for the season. Each such report shall be filed with the committee no later than 5:00 p.m. (the close of business) on the Tuesday immediately following the shipping week. For the purpose of this subsection, the shipping week is defined as Sunday through Saturday. The report shall show:

- (1) The company name, contact person, and phone number of the handler;
- (2) Weekly period covered by the report;
- (3) Total fresh market shipments and gross f.o.b. sales of kiwifruit by pack style and size; and
- (4) Total fresh market shipments and gross f.o.b. sales to export markets by pack style and size.

(e) Handlers who file the KISS Price/Shipment report specified in paragraph (d) of this section are exempt from filing the shipping report specified in paragraph (a) of this section and the KISS/Shipment report specified in paragraph (b) of this section.

Dated: September 2, 2009.

**Rayne Pegg,**  
*Administrator, Agricultural Marketing Service.*  
 [FR Doc. E9-21657 Filed 9-8-09; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 993**

[Doc. No. AMS-FV-09-0048; FV09-993-1 IFR]

**Dried Prunes Produced in California; Decreased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) for the 2009-10 and subsequent crop years from \$0.30 to \$0.16 per ton of salable dried prunes. The Committee locally administers the marketing order that regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective September 10, 2009. Comments received by November 9, 2009, 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 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.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 available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at the Web site referenced above.

**FOR FURTHER INFORMATION CONTACT:** Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-

5901, Fax: (559) 487-5906, or e-mail: [Debbie.Wray@ams.usda.gov](mailto:Debbie.Wray@ams.usda.gov), or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

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@ams.usda.gov](mailto:Jay.Guerber@ams.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 on August 1, 2009, and continue until amended, suspended, or terminated.

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 decreases the assessment rate established for the Committee for the 2009-10 and subsequent crop years

from \$0.30 to \$0.16 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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 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 terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 25, 2009, and unanimously recommended an assessment rate of \$0.16 per ton of salable dried prunes and expenditures totaling \$54,138 for the 2009–10 crop year. In comparison, last year's approved expenses were \$65,600. The assessment rate of \$0.16 per ton of salable dried prunes is \$0.14 lower than the rate currently in effect.

The Committee recommended a lower assessment rate because the 2009–10 crop is estimated at 160,000 tons, which is over 34,000 tons larger than the 2008–09 crop. Income generated from the lower assessment rate combined with excess assessment income carried into the new crop year should be adequate to cover the Committee's 2009–10 expenses.

The Committee's budget of expenses of \$54,138 includes a slight increase in personnel expenses and decreases in operating expenses and for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the California Dried Plum Board (CDPB). The Committee believes that extra assessment income carried in from the 2008 crop year, plus interest income and 2009 assessment income, is adequate to cover its estimated expenses of \$54,138.

The major expenditures recommended by the Committee for the 2009–10 crop year include \$26,450 for salaries and benefits, \$11,780 for operating expenses, and \$15,908 for contingencies. For the 2008–09 crop

year, the Committee's budgeted expenses were \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$26,459 for contingencies.

The assessment rate recommended by the Committee was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2009–10 crop year, and estimated interest income. Dried prune production for the year is estimated to be 160,000 salable tons, which should provide \$25,600 in assessment income at \$0.16 per ton of salable dried prunes. Income derived from handler assessments, plus excess funds from the 2008–09 crop year should be adequate to cover budgeted expenses.

The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2008–09 crop year (currently estimated at \$28,533) for up to 5 months beyond the end of the crop year to meet 2009–10 crop year expenses, which are estimated to be \$54,138. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

The assessment rate established in this rule is effective indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2009–10 budget and those for subsequent crop years will 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.

There are approximately 900 producers of dried prunes in the production area and approximately 20 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 are defined as those whose annual receipts are less than \$7,000,000.

Committee data indicates that about 64 percent of the handlers ship under \$7,000,000 worth of dried prunes. Dividing the average prune crop value for 2008–09 reported by the National Agricultural Statistics Service (NASS) of \$196,080,000 by the number of producers (900) yields an average annual producer revenue estimate of about \$217,867. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent crop years from \$0.30 to \$0.16 per ton of salable dried prunes.

The Committee met on June 25, 2009, and unanimously recommended estimated expenses for 2009–10 of \$54,138 and a decreased assessment rate of \$0.16 per ton of salable dried prunes. The Committee's budget of expenses of \$54,138 includes a slight increase in personnel expenses and decreases in operating expenses and for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the CDPB. The Committee believes that extra assessment income carried in from the 2008 crop year, plus interest income and 2009 assessment income, is adequate to cover its estimated expenses of \$54,138.

The assessment rate of \$0.16 per ton of salable dried prunes is \$0.14 per ton of salable dried prunes lower than the rate currently in effect. The quantity of salable dried prunes for the 2009–10 crop year is currently estimated at 160,000 tons, compared to 125,373 tons of salable dried prunes for the 2008–09 crop year.

The major expenditures recommended by the Committee for the

2009–10 crop year include \$26,450 for salaries and benefits, \$11,780 for operating expenses, and \$15,908 for contingencies. Budgeted expenses for these items in 2008–09 were \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$26,459 for contingencies.

The 2009–10 assessment rate was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2009–10 crop year, and estimated interest income. Therefore, the Committee recommended an assessment rate of \$0.16 per ton of salable dried prunes.

Prior to arriving at its budget of \$54,138, the Committee considered information from various sources, including the Committee's Executive Subcommittee. The Executive Subcommittee reviewed the administrative expenses shared between the Committee and the CDPB in recent years. The Executive Subcommittee then recommended the \$54,138 budget and \$0.16 per ton assessment rate to the Committee. The Committee recommended the same budget and assessment rate to USDA.

Section 993.81(c) of the order provides the Committee the authority to use excess assessment funds from the 2008–09 crop year (estimated at \$28,533) for up to 5 months beyond the end of the crop year to meet 2009–10 crop year expenses, which are estimated to be \$54,138. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

To calculate the percentage of grower revenue represented by the assessment rate for 2008, the assessment rate of \$0.30 per ton is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2008–09 crop year as a percentage of grower revenue of .02 percent (\$0.30 divided by \$1,520 per ton). NASS data for 2009 is not yet available. However, applying the same calculations above using the average grower price for 2006–08 would result in estimated assessment revenue as a percentage of total grower revenue of .01 percent for the 2009–10 crop year (\$0.16 divided by \$1,453 per ton). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2009.

This action decreases 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 25, 2009, 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 comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2009–10 crop year begins on August 1, 2009, and the marketing order requires that the rate of assessment for each year apply to all assessable prunes handled during the year; (2) this action decreases the assessment rate for assessable prunes beginning with the 2009–10 crop year; (3) handlers are aware of this

action which was unanimously recommended at a public meeting and is similar to actions recommended by the Committee in past years, and (4) this interim final rule provides for a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

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

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

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

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

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

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

#### § 993.347 Assessment rate.

On and after August 1, 2009, an assessment rate of \$0.16 per ton of salable dried prunes is established for California dried prunes.

Dated: September 2, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–21658 Filed 9–8–09; 8:45 am]

**BILLING CODE 3410–02–P**

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 121

**RIN 3245–AE92**

#### Small Business Size Regulations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals; Correction

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Correcting amendments.

**SUMMARY:** The U.S. Small Business Administration (SBA) is correcting several of its Small Business Size Regulations, published in the **Federal Register** on May 21, 2004. SBA is correcting a reference to an incorrect North American Industry Classification System (NAICS) code, and updating two Internet Web addresses that appear in part 121 of the Code of Federal Regulations (CFR), chapter 13.

**DATES:** Effective September 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Carl J. Jordan, Program Analyst, Office of