

finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 43038; July 23, 2010), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule that amended 7 CFR part 920 and that was published at 75 FR 43038 on July 23, 2010, is adopted as a final rule without change.

Dated: October 25, 2010.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2010-27788 Filed 11-2-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS-FV-10-0057; FV10-993-1 FR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Prune Marketing Committee (Committee) for the 2010-11 and subsequent crop years from \$0.16 to \$0.27 per ton of salable dried prunes handled. The Committee locally administers the marketing order that regulates the handling of dried prunes grown 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 Date:* November 4, 2010.

FOR FURTHER INFORMATION CONTACT:

Andrea Ricci, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail:

Andrea.Ricci@ams.usda.gov or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this

regulation by contacting Antoinette Carter, 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: *Antoinete.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 110 and 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 order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This 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, 2010, 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 increases the assessment rate established for the Committee for the 2010-11 and subsequent crop years from \$0.16 to \$0.27 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 a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2009-10 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 24, 2010, and unanimously recommended 2010-11 expenditures of \$58,353 and an assessment rate of \$0.27 per ton of salable dried prunes. In comparison, last year's budgeted expenditures, as amended in March of 2010, were \$57,756. The assessment rate of \$0.27 is \$0.11 higher than the rate currently in effect.

The Committee recommended the higher assessment rate based on a production estimate of 150,000 tons of salable dried prunes for this year, which is substantially less than the 165,488 tons produced last year. At this assessment rate, the expected assessment income for the 2010-11 crop year is \$40,500. The Committee believes 2010-11 assessment income, plus extra assessment income carried in from the 2009 crop year and interest income, will be adequate to cover its estimated expenses of \$58,353.

The Committee's budget of expenses of \$58,353 includes a twenty percent increase in personnel expenses, and a nine percent decrease in operating expenses. Combined personnel and operational expenses are about eleven percent higher than last year, or about \$42,511. The Committee also included \$15,842 for contingencies, which is substantially less than the \$19,526 included for last year's budget. Most of the Committee's expenses reflect its portion of the joint administration costs of the Committee and the California Dried Plum Board (CDPB). Based on the Committee's reduced activities in recent years, it is funding only five percent of the shared expenses of the two programs. This funding level is similar to that of last year.

The major expenditures recommended by the Committee for the 2010-11 year include \$31,781 for salaries and benefits, \$10,730 for

operating expenses, and \$15,842 for contingencies. Budgeted expenses for these items in 2009–10 were \$26,450, \$11,780, and \$19,526 respectively.

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 2010–11 crop year, and estimated interest income. As mentioned earlier, dried prune production for the year is estimated at 150,000 salable tons, which should provide \$40,500 in assessment income. The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2009–10 crop year (currently estimated at \$17,847) for up to 5 months beyond the end of the crop year to meet its 2010–11 crop year expenses. At the end of the 5 months, the Committee must either refund or credit excess funds back to handlers.

The assessment rate established in this rule 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 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 would 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 2010–11 budget, and those for subsequent crop years, would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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.

There are approximately 900 producers of dried prunes in the California area and approximately 21 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 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 less than \$7,000,000 worth of dried prunes. Dividing the 2009–10 prune crop value of \$188,400,000 reported by the National Agricultural Statistics Service by the number of producers (900) yields an average producer revenue of about \$209,333. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent crop years from \$0.16 to \$0.27 per ton of salable dried prunes. The Committee unanimously recommended 2010–11 expenditures of \$58,353 and an assessment rate of \$0.27 per ton of salable dried prunes. The assessment rate of \$0.27 is \$0.11 higher than the 2009–10 rate. The quantity of assessable dried prunes for the 2010–11 year is estimated at 150,000 tons. Thus, the \$0.27 rate should provide \$40,500 in assessment income. The Committee believes that 2010–11 assessment income, plus extra assessment income carried in from the 2009–10 crop year and anticipated interest income, should be adequate to cover its estimated expenses of \$58,353.

The major expenditures recommended by the Committee for the 2010–11 year include \$31,781 for salaries and benefits, \$10,730 for operating expenses, and \$15,842 for contingencies. Budgeted expenses for these items in 2009–10 were \$26,450, \$11,780, and \$19,526 respectively.

The Committee recommended the higher assessment rate based on a production estimate of 150,000 tons of salable dried prunes for this year, which is substantially less than the 165,488 tons produced last year. At this assessment rate, the assessment income for the 2010–11 crop year should be \$40,500. The Committee's budget of expenses of \$58,353 includes a twenty

percent increase in personnel expenses, and a nine percent decrease in operating expenses. Combined personnel and operational expenses are about eleven percent higher than last year, or about \$42,511. The Committee also included \$15,842 for contingencies, which is substantially less than the \$19,526 included for last year's budget. Most of the Committee's expenses reflect its portion of the joint administration costs of the Committee and the CDPB. Based on the Committee's reduced activities in recent years, it is funding only five percent of the shared expenses of the two programs. This funding level is similar to that of last year.

The Committee reviewed and unanimously recommended 2010–11 expenditures of \$58,353, which included an increase in personnel expenses and a decrease in operational expenses. Prior to arriving at its budget of \$58,353, the Committee considered information from various sources, including its Executive Subcommittee. The assessment rate of \$0.27 per ton of salable dried prunes 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 2010–11 crop year, and estimated interest income. The Committee considered the alternative of continuing with the \$0.16 per ton assessment rate. However, an assessment rate of \$0.27 per ton of salable dried prunes, along with excess funds from the 2009–10 crop year, is needed to provide enough income to fund the Committee's operations.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2008–09 crop year was \$1,500 per ton, that the grower price for the 2009–10 crop year was \$1,200 per ton, and that the grower price for the 2010–11 crop year could range between \$1,000 and \$1,100 per ton of salable dried prunes. Based on an estimated 150,000 salable tons of dried prunes, assessment revenue as a percentage of producer prices during the 2010–2011 crop year is expected to range between .027 and .025 percent.

This action increases 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 June 24, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on August 24, 2010 (75 FR 51956). Copies of the proposed rule were also mailed or sent via facsimile to all dried prune handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 23, 2010, was provided for interested persons to respond to the proposal. No comments were received.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter 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 2010–11 crop year began on August 1, 2010, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried 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. Also, a 30-day comment period was provided in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 993

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

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

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

■ 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, 2010, an assessment rate of \$0.27 per ton of salable dried prunes is established for California dried prunes.

Dated: October 25, 2010.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2010–27796 Filed 11–2–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1215

[Document Number AMS–FV–10–0010]

Popcorn Promotion, Research, and Consumer Information Order; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Popcorn Promotion, Research and Consumer Information Order (Order) to reduce the Popcorn Board (Board) membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry. In accordance with the Popcorn Promotion, Research and Consumer Information Order which is authorized by the Popcorn Promotion, Research and Consumer Information Act (Act), the number of members on the

Board may be changed by regulation; provided, that the Board consist of not fewer than four members and not more than nine members. In addition, the Order states that for purposes of nominating and appointing processors to the Board, the Secretary may take into account the geographical distribution of popcorn processors.

DATES: *Effective Date:* November 4, 2010.

FOR FURTHER INFORMATION CONTACT:

Deborah Simmons, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: deborah.simmons@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Popcorn Promotion, Research, and Consumer Information Order [7 CFR part 1215]. The Order is authorized under the Popcorn Promotion, Research and Consumer Information Act [7 U.S.C. 7481–7491]. This rule amends the Popcorn Promotion, Research and Consumer Information Order to reduce the Popcorn Board membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry.

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the U.S. Department of Agriculture (Department) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides