



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 993**

[Doc. No. AMS-SC-19-0056; SC19-993-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Prune Marketing Committee (Committee) to decrease the assessment rate established for the 2019-20 and subsequent crop years from \$0.28 to \$0.25 per ton of salable dried prunes handled under the Marketing Order 993. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**FOR FURTHER INFORMATION CONTACT:** Maria Stobbe, Marketing Specialist, or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538-1674, Fax: (559) 487-5906, or Email: [Maria.Stobbe@usda.gov](mailto:Maria.Stobbe@usda.gov) or [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 993, as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. Part 993 (Referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of dried prunes operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted

from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the 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 will be applicable to all assessable dried prunes beginning on August 1, 2019, 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.

The Order authorizes 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 are familiar with the Committee's needs and with costs of 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 where all directly affected persons have an opportunity to participate and provide input.

This final rule decreases the assessment rate from \$0.28, the rate that was established for the 2013-14 and

subsequent crop years, to \$0.25 per ton of salable dried prunes handled for the 2019-20 and subsequent crop years.

The Committee met on June 20, 2019, and unanimously recommended 2019-20 crop year expenditures of \$24,500 and an assessment rate of \$0.25 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were \$20,470. The assessment rate of \$0.25 is \$0.03 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to reflect an anticipated larger crop size, which is expected to result in assessment revenue being greater than their anticipated expenses.

Of the total \$24,500 budgeted for the 2019-20 crop year, major expenditures recommended by the Committee include \$13,300 for personnel, and \$11,200 for operating expenses. In comparison, budgeted expenses for these items in 2018-19 were \$10,490, and \$9,980, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and expected shipments of 110,000 tons of salable dried prunes. Income derived from handler assessments is estimated to be \$27,500

(110,000 x \$0.25), along with interest income, should be adequate to cover budgeted expenses of \$24,500.

The assessment rate established in this final rule 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 will be 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 will be undertaken as necessary. The Committee's 2019-20 crop year 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 proposed 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 businesses 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.

There are approximately 800 producers of dried prunes in the production area and 20 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to Committee data, the average price for California dried prunes during the 2017-18 season was approximately \$1,980 per ton with a total production of

105,000 tons. Using the average price and shipment information, the number of handlers (20), and assuming a normal distribution, the majority of handlers would have average annual receipts of greater than \$30,000,000. Thus, the majority of California dried prune handlers may be classified as large business entities.

In addition, and assuming a normal distribution, dividing the average prune crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of \$206,084,000, by the number of producers (800) yields an average annual producer revenue estimate of about \$257,605. Based on the foregoing, the majority of producers of California dried prunes may be classified as small entities.

This final rule decreases the assessment rate collected from handlers for the 2019-20 and subsequent crop years from \$0.28 to \$0.25 per ton of salable California dried prunes. The Committee unanimously recommended 2019-20 expenditures of \$24,500 and an assessment rate of \$0.25 per ton of salable dried prunes handled. The assessment rate of \$0.25 is \$0.03 lower than the rate currently in effect. The quantity of assessable dried prunes for the

2019-20 crop year is estimated at 110,000 tons. Thus, the \$0.25 rate should provide \$27,500 in assessment income (110,000 x \$0.25). Income derived from handler assessments, along with interest income, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2019-20 crop year include \$13,300 for personnel, and \$11,200 for operating expenses. In comparison, budgeted expenses for these items in 2018-19 were \$10,490, and \$9,980, respectively.

The Committee recommended decreasing the assessment rate given the increase in crop size and the associated revenue would be sufficient to fund their proposed 2019-20 crop year expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Executive Committee and NASS. Alternative expenditure levels were discussed by the Executive Committee, who reviewed the relative value of various activities to the prune industry. This committee determined that all program activities were adequately funded and; thus, no alternate expenditure levels were

deemed appropriate. Additionally, maintaining the current assessment rate of \$0.28 per ton of salable dried prunes was discussed. However, sufficient funds would be generated at the larger crop size (\$27,500), even if assessed at the lower assessment rate. The rate of \$0.25 per ton of salable dried prunes may exceed their anticipated expenses by \$3,000, thereby providing a contingency funds for unexpected expenses.

Based on these discussions and estimated shipments, the assessment rate of \$0.25 should provide \$27,500 in assessment income. The Committee determined that assessment revenue, and interest income, should be adequate to cover budgeted expenses for the 2019-20 crop year.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2019-20 crop year should be approximately \$2,000 per ton of salable dried prunes. Therefore, the estimated assessment revenue for the 2019-20 crop year as a percentage of total grower revenue would be about 0.01 percent.

This final rule 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 also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the California prune industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 20, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large California 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 September 24, 2019 (84 FR 49963). Copies of the proposed rule were provided to the California 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 on October 24, 2019, was provided for interested persons to respond to this proposal. No comments were received; and, thus, no changes were made to the proposed 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material, including information and recommendation submitted by the Committee and other available information, it is hereby found that this final rule will tend to effectuate the declared policy of the act.

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

Marketing agreements, Plum, 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, 2019, an assessment rate of

\$0.25 per ton of salable dried prunes is established for California dried prunes.

Dated: November 21, 2019.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

BILLING CODE 3410-02 P

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