

# Proposed Rules

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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. FV99-993-3 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the current assessment rate from \$3.28 to \$2.00 per ton of salable dried prunes established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1999-2000 and subsequent crop years. The Committee is responsible for local administration of 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 assessment rate decrease is possible because the 1999-2000 assessable tonnage is expected to total 173,700 salable tons (74 percent higher than last crop year). The \$2.00 assessment rate would allow the Committee to meet its 1999-2000 expenses. 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 August 30, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.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.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail:

Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement 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 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 (Department) 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 on August 1, 1999, 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 the Secretary 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 the Secretary 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 the Secretary'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 decrease the assessment rate established for the Committee for the 1999-2000 and subsequent crop years from \$3.28 per ton to \$2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, 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 1998-99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 29, 1999, and unanimously recommended to

increase its 1999–2000 budget from \$327,180 to \$347,400 and decrease the current assessment rate from \$3.28 to \$2.00 per ton of salable dried prunes. Even with the increased budget, the \$1.28 per ton decrease in the assessment rate to \$2.00 per ton would allow the Committee to meet its 1999–2000 expenses. The California Agricultural

Statistical Service estimates a 180,000 ton crop during the 1999–2000 crop year, of which 6,300 tons are not expected to be salable because of size or quality, leaving a balance of 173,700 salable tons. This is a 74 percent increase in salable tonnage from last year and allows the Committee to

recommend lowering its assessment rate.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, and major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	(\$1,000)	
	1998–99	1999–2000
Salaries, Wages and Benefits .....	189.7	201.265
Research and Development .....	0	30
Office Rent .....	23	24
Travel .....	18.5	21
Reserve (Contingencies) .....	50.93	16.735
Equipment Rental .....	9	9.5
Data Processing .....	3.85	5
Stationary and Printing .....	5	5.5
Office Supplies .....	5	5
Postage and Messenger .....	5	7

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 at 173,700 salable tons which should provide \$347,400 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at \$51,857) for up to 5 months beyond the end of the crop year to meet 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1999–2000 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

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 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Currently the prune industry profile shows that 8 of the 20 handlers (40

percent) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60 percent) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, would be considered large growers with annual income over \$500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule would decrease the current assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent crop years from \$3.28 per ton to \$2.00 per ton of salable dried prunes. The Committee unanimously recommended 1999–2000 expenditures of \$347,400 and an assessment rate of \$2.00 per ton of salable dried prunes. The proposed assessment rate of \$2.00 is \$1.28 lower than the current 1998–99 rate (64 FR 3621, January 25, 1999). The quantity of assessable dried prunes for the 1999–2000 crop year is now estimated at 173,700 salable tons. Thus, the \$2.00 rate should provide \$347,400 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 1999–2000 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, with major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	(\$1,000)	
	1998-99	1999-2000
Salaries, Wages and Benefits .....	189.7	201.265
Research and Development .....	0	30
Office Rent .....	23	24
Travel .....	18.5	21
Reserve (Contingencies) .....	50.93	16.735
Equipment Rental .....	9	9.5
Data Processing .....	3.85	5
Stationery and Printing .....	5	5.5
Office Supplies .....	5	5
Postage and Messenger .....	5	7

The Committee reviewed and unanimously recommended 1999-2000 expenditures of \$347,400. The assessment rate of \$2.00 per ton of salable dried prunes was then determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 1998-99 crop year (currently estimated at \$51,857) for up to 5 months beyond the end of the crop year to fund 1999-2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (\$ 993.81(c)). Anticipated assessment income and interest income during 1999-2000 would be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1999-2000 season should average above \$850 per salable ton of dried prunes. Based on estimated shipments of 173,700 salable tons, assessment revenue during the 1999-2000 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action would decrease 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 would reduce 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 29, 1999, 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.

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

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 1999-2000 crop year begins on August 1, 1999, 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 proposed rule would decrease the assessment rate for assessable prunes beginning with the 1999-2000 crop year; 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, 1999, an assessment rate of \$2.00 per ton is established for California dried prunes.

Dated: July 23, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-19352 Filed 7-28-99; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 1079

[DA-99-02]

##### Milk in the Iowa Marketing Area; Termination of Proceeding

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

**ACTION:** Termination of Proceeding.

**SUMMARY:** This document terminates the proceeding that was initiated to consider a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and to further reduce the percentage for June 1999.

##### FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address [connie.brenner@usda.gov](mailto:connie.brenner@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

Final Rule: Issued May 5, 1999; published May 11, 1999 (64 FR 25193).

Notice of Reopening and Extension of Time for Filing Comments: Issued May 7, 1999; published May 13, 1999 (64 FR 25851).

##### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the