

reference the removal of prune plum trees prior to harvest as an eligible diversion method. In the past, it has been determined that removing trees will qualify as unharvested production under the existing regulations. However, the Committee recommended adding clarifying language to the regulations to ensure that the removal of trees will qualify as an eligible diversion method.

A final change to § 993.162(b) will require the Committee to conduct a meeting prior to the beginning of any crop year in which a diversion program was being contemplated to determine which diversion method or methods may be used, and announce the eligible diversion method(s) to the industry. Section 993.162(b) is modified to reflect these changes.

To participate in the diversion program, producers must file an application with the Committee. Section 993.162(c) of the regulations currently requires that when a producer applies for the diversion program, a deposit fee shall accompany the application. The deposit fees established in the current regulations are as follows: For each producer application, the fee shall be the greater of either \$100 or the amount obtained by multiplying the quantity, in tons, of prune plums to be diverted by \$3.50. For commercial dehydrators acting as an agent for a group of four or more producers, the fee shall be the greatest of either \$200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums to be diverted by the group by \$3.50. The deposit fees charged to diverting growers were intended to finance the Committee's administrative costs for the entire diversion program with any excess monies to be refunded on a prorated basis to participants. Because of changed economics since these fees were established in the 1970's, the deposit fees established in the regulations will not currently cover these costs. The Committee, therefore, recommended revising the regulations to provide that whenever a diversion program is implemented, the Committee shall, with the approval of the Secretary, compute and announce the deposit fees associated with filing applications for the diversion program. The deposit fees will be announced to the industry, instead of specifying the deposit fees in the rules and regulations. It is intended that the computed fees will reflect Committee administrative costs associated with administering a diversion program whenever such a program is recommended.

These changes will allow flexibility in the regulations by allowing the Committee to compute and announce

the fees. Section 993.162(c) is modified to reflect these changes.

The Committee also recommended changes to § 993.162(d) of the regulations. This section includes criteria for approving diversion applications and establishes fees in connection with modifying applications. The changes will remove reference to specific fees and allow the Committee to apply fees consistent with the process regarding deposit fees. The changes also will increase the service charge for modifying applications from \$1 to \$2 per ton to reflect current administrative costs. Section 993.162(d) is modified accordingly.

The rules and regulations pertaining to implementing a prune diversion program were developed in the 1970's, and several provisions are outdated. These changes are designed to bring the rules and regulations in line with the present California prune industry practices. The changes also provide for flexibility in years when reserve pooling and a diversion program are implemented.

#### **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 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 1,205 producers of dried prunes in the production area and approximately 24 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 of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under \$5,000,000 worth of prunes and could

be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual receipts over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities. USDA does not have precise numbers on the total number of commercial dehydrators in the industry or their size. However, it may be assumed that many may be considered small under SBA criteria.

Under § 993.62 of the order, when volume control in the form of a reserve pool is implemented, prune producers can elect to divert part of their prune plum crop from normal markets in lieu of placing prunes in a reserve pool. Section 993.162 contains the administrative rules and regulations necessary to administer a diversion program. This rule will revise those regulations.

One of the changes will remove references in the regulations to establish dryaway ratios for prune plums of the French variety. Dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets. Because these dryaway ratios are outdated, the Committee recommended replacing them by a process that will allow the Committee to compute and announce current dryaway ratios based on a survey of commercial dehydrators. Surveying commercial prune dehydrators will impose a minor information collection burden on such entities. It is estimated that between 8 and 15 commercial dehydrators will be requested to furnish information on their annual average dryaway ratios to the Committee, and that it will take approximately 15 minutes to furnish the information. The total estimated annual burden of collecting this information is estimated to be 225 minutes (3 hours and 45 minutes) for the industry. However, the Committee believes that the burden to complete a commercial dehydrator dryaway ratio survey will be outweighed by obtaining and using updated dryaway ratio data for French prunes when dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets.

Another change will update the prune producing regions to which the dryaway ratios for French prunes are applied, and allow the Committee to update the areas based on current production information. Dryaway ratios vary from area to area, and prune production shifts over time. Another change will specify in the regulatory text that tree removal is an acceptable diversion method, and