

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV02-993-2 FR]

#### **Dried Prunes Produced in California; Revising the Regulations Concerning Compensation Rates for Handlers' Services Performed Regarding Reserve Prunes Covered Under the California Dried Prune Marketing Order**

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the regulations concerning compensation rates for handlers' services performed in connection with reserve prunes covered under Marketing Order No. 993 (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule will establish a procedure in the administrative rules and regulations which the Committee will follow to compute the level of handler payments for holding reserve prunes during and beyond the crop year of acquisition. These payment rates will reflect current industry costs. The rule also will establish time frames for changing the payment rates, and procedures for informing interested persons of the payment rates and payment procedures. This rule also does not allow for payment of handler services for reserve prunes released through the handler acceptance of diversion certificates if the released prunes have not been stored by the handler.

**EFFECTIVE DATE:** This final rule becomes effective May 12, 2003.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration

Branch, 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

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@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 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. A 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 final rule revises the regulations concerning compensation to handlers for services they perform pertaining to reserve prunes covered under the order. Under the order, handlers are compensated for such costs as inspection, receiving, storing, grading, and fumigation of reserve prunes held for the account of the Committee. In the administrative rules and regulations, the compensation rate has been \$25 per ton since the early 1970's. This rule establishes a procedure in the administrative rules and regulations that the Committee will follow to compute the level of handler payments that reflect current industry costs instead of having the compensation rate stated in the rule. The Committee will obtain current industry costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results will not be considered in the average. The average may be rounded to the nearest \$0.25. USDA will approve the updated compensation rate computed by the Committee. The Committee will announce the compensation rate for handling reserve prunes at the time the Committee reviews the industry statistics during the latter part of June and notify all handlers accordingly. Additional payment for handler services for reserve prunes held beyond the crop year of acquisition will be updated through a stated percentage of the handler compensation rate during the crop year of acquisition. The Committee unanimously recommended this action on November 29, 2001.

The order provides authority for volume regulation designed to promote orderly marketing conditions, to stabilize prices and supplies, and to improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order, including government purchases. Net