

second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages will add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and to inform handlers in accordance with paragraph (e) of § 993.159. Handlers will be compensated at that rate for use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are modified accordingly.

New paragraph (e) of § 993.159 will specify that the Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

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, will be considered large growers with annual incomes over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Pursuant to § 993.59 of the order, this final rule will allow the Committee to compute and announce the level of payments paid to handlers for services performed in connection with holding reserve prunes for the account of the Committee. Each handler holding reserve prunes for the account of the Committee will complete such services so that the Committee is assured that the prunes are maintained in good condition. The Committee will use the procedure specified in the administrative rules and regulations for computing the payment levels. This flexibility will allow for cost updates in a timely and efficient manner and at less cost to implement. This rule will allow the Committee to survey each of the prune handlers to obtain their costs for each category of expenses for handling reserve prunes listed in § 993.159 of the administrative rules and regulations. These costs will be averaged according to the formula in the rules and regulations. After reviewing and computing these costs, the Committee will submit the compensation rates to USDA for approval. After USDA approves the compensation rates, the payment rates will be publicized as required in paragraph (e) of this section. No payments for handler services will be made for reserve prunes released by handler acceptance of diversion certificates if the handler has not stored the released dried prunes for the account of the Committee.

The Committee also recommended a number of administrative changes to the rules and regulations. They include: (1) Correcting a section reference in § 993.159(a) from § 993.57 to § 993.59; (2) Adding a provision to § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review the costs incurred by handlers in connection with holding reserve prunes for the account of the Committee, except that the Committee may extend this date up to 10 business days if warranted by a late crop; (3) Adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) Adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) Eliminating references to personal pronouns and replacing them with descriptive nouns so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) also be updated and be formula based. These provisions regard payments to handlers for services (storage and fumigation) rendered in connection with reserve prunes held beyond the crop year of acquisition. The regulations currently establish the reimbursement rate at \$2 per ton for the first quarter of the crop year after acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that the handler payment rate for the first quarter of the crop year after acquisition be 10 percent of the yearly rate for the crop year of acquisition, rather than establishing a specific payment rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters of the crop year following acquisition at \$1.00, \$0.25, and \$0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages will add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for