

# Rules and Regulations

Federal Register

Vol. 68, No. 183

Monday, September 22, 2003

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV03-993-1 FIR]

#### Dried Prunes Produced in California; Changes in Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the reporting requirements currently prescribed under the California dried prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule continues to allow California prune handlers to report their shipments quarterly, rather than monthly, and to no longer report export shipment destination countries. Also, handlers will continue to report type of pack as "bulk and consumer pack" to reveal less marketing information. This action will continue the reduced information collection burden upon handlers, while still enabling the Committee to collect information necessary for program administration.

**EFFECTIVE DATE:** October 22, 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, or 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 rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This 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 rule continues in effect modifications to language in the order's administrative rules and regulations to allow California prune handlers to

report their shipments quarterly, rather than monthly. Also, handlers will continue to report their export market shipments to the Committee by region, rather than by country. The amount of information disseminated by the Committee is also reduced. The Committee is no longer reporting the export shipments to the industry by country, and the regions that handlers ship into is only reported once a year, when the marketing policy is prepared. Also, the reporting of type of pack is changed from "carton, visipak, and other" to "bulk and consumer pack". These changes reduce the information collection burden upon handlers and the Committee's administrative costs because of the switch to quarterly distribution. This action was unanimously recommended by the Committee at a meeting on April 3, 2003.

#### Marketing Order Authority

Section 993.72 of the order provides authority for the Committee to require handlers to file such reports of acquisitions, sales, uses, and shipments of prunes, as may be requested by the Committee. Also, pursuant to § 93.36(c), one of the Committee's duties is to assemble data on the producing, handling, shipping, and marketing conditions relative to prunes in connection with the performance of its official duties. To prevent the release of proprietary business information, the information from all of the handlers is totaled and then distributed.

#### Administrative Rules and Regulations

Prior to implementation of the interim final rule, § 993.172 required handlers to report each month on their holdings, receipts, uses, and shipments of prunes produced in California.

Paragraph (d) of § 993.172 requires handlers to report shipments of dried prunes produced in California. This information is reported on PMC Form 12.1, "Report of Shipments," and an addendum to that form referred to as PMC Form 12.1A, "Cumulative Prune Export Shipments."

Prior to the implementation of the interim final rule, each handler was required to file with the Committee for each month, not later than the 5th working day of the next succeeding month, Forms PMC 12.1 and 12.1A, reporting shipments (including cumulative exports by country) of