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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03-993-2 FIR]

Dried Prunes Produced in California; Temporary Suspension of the Prune Reserve and the Voluntary Producer Prune Plum Diversion Provisions

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 suspending the prune reserve and the voluntary producer prune plum diversion provisions in the California Dried Prune Marketing Order (order) and the administrative rules and regulations related to volume control restrictions for a five-year period. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (PMC). Suspension of these provisions ensures that volume control restrictions will not be implemented under the order. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or continue unchanged. In the absence of additional rulemaking to modify or terminate these provisions, they will come back into effect automatically at the end of the five-year period.

EFFECTIVE DATE: November 6, 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.

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 the suspension for five years of all

provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer prune plum diversion. This action was unanimously recommended by the PMC. This rule will continue to ensure that reserve percentages are not established, and that a prune plum diversion program is not implemented pursuant to these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain unchanged.

Marketing Order Authority To Suspend

Section 993.90(a) states in part: "The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the act."

Volume Regulation Provisions

Section 993.54 of the order provides authority for volume regulation through establishing salable and reserve percentages of prunes received by handlers (prune reserve). When the prune reserve is in effect, the salable percentage of the California prune crop may be sold to any market while the reserve percentage must be held by the handlers for the account of the PMC. Reserve prunes may be sold to meet either domestic or foreign trade demand or for use in outlets noncompetitive with normal outlets for salable prunes. Net proceeds from sales of reserve prunes are ultimately distributed to producers. The prune reserve is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns.

Voluntary Prune Plum Diversion Program

Section 993.62 of the order authorizes a producer diversion program, which prune producers may use when a prune reserve is implemented. Section 993.162 of the administrative rules and regulations specifies implementing procedures. Under the producer diversion program, any prune producer may divert prune plums of his own production for eligible purposes and receive a diversion certificate from the PMC. The certificate may be submitted to any handler in lieu of reserve prunes