

amended, suspended, or terminated. 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. Such 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 to decrease the assessment rate established for the Committee for the 2003–04 and subsequent crop years from \$2.60 per ton to \$2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2003, and unanimously recommended 2003–04 expenditures of \$341,000 and an assessment rate of \$2.00 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were \$384,370. The assessment rate is \$0.60 lower than the rate previously in effect.

The Committee was able to recommend a lower assessment rate this year because salable prune production is expected to be 170,500 tons, 15,500 tons higher than production last year. With a larger 2003–04 prune crop and lower budget, an assessment rate of \$2.00 per ton will provide sufficient funds for Committee operations this year. The following table compares major budget expenditures recommended by the Committee on June 26, 2003, and major budget expenditures in the 2002–03 budget.

Budget expense categories	2002–03	2003–04
Total Personnel		
Salaries .....	\$232,575	\$220,540
Total Operating		
Expenses .....	136,850	103,750
Reserve for Contingencies .....	14,945	16,710

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year continues to be estimated at 170,500 salable tons, which should provide \$341,000 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Interest income also will be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2002–03 crop year (currently estimated at \$78,947) for up to 5 months beyond the end of the crop year to meet 2003–04 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The

Committee's 2003–04 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

#### 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 the 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 21 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 less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Eight of the 21 handlers (38%) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62%) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3% of the 1,205 total producers, may be considered large growers with annual income over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent crop years from \$2.60 per ton to \$2.00 per ton of salable dried prunes. The Committee unanimously recommended 2003–04 expenditures of \$341,000 and an assessment rate of \$2.00 per ton of salable dried prunes.

The assessment rate is \$0.60 lower than the rate previously in effect. The quantity of assessable dried prunes for the 2003–04 crop year continues to be estimated at 170,500 salable tons. Thus, the \$2.00 rate should provide \$341,000 in assessment income and be adequate to meet this year's expenses. Interest