

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 of the outgoing prune inspection and quality requirements in the order and its administrative rules and regulations, and the prune import regulation for a three-year period, and modification of the undersized prune disposition requirements. These changes became effective with the start of the new crop year on August 1, 2003. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). The Committee unanimously recommended

suspension of the outgoing inspection, and outgoing prune quality requirements at meetings held on April 3, and May 1, 2003, because it is the quickest way to ensure relief from these regulations. During the three-year suspension period, the industry will have the opportunity to develop and implement outgoing inspection and finished product grade standards that are more in line with current industry needs. As discussed below, suspension of the prune import regulation is required under section 8e of the Act.

Marketing Order Authority To Modify and Suspend

Section 993.50(g) states in part: "rules and regulations to insure proper disposition of the [undersized] prunes shall be established by the Committee with the approval of the Secretary."

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 finds that such provisions do not tend to effectuate the declared policy of the act."

Outgoing Grade and Size Regulations

The order previously mandated outgoing inspections and outgoing prune quality, size, and labeling requirements of California produced prunes by California prune handlers to verify that such prunes meet quality requirements. These requirements were based on the U.S. Standards for Grades of Dried Prunes and marketing order grade standards. The objective of the inspection, grade, size, and labeling requirements was to ensure that only prunes of acceptable quality and size entered the domestic and foreign markets for human consumption, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the costs associated with existing minimum grade, size, and labeling standards may exceed the benefits accrued from such requirements at this time.

Prune Import Regulations

Section 8e of the Agriculture Marketing Agreement Act of 1937 (Act) provides that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 999.200 contained the prune import regulations that were comparable to the

domestically produced prune outgoing quality and size requirements. Since this rule continues to suspend the outgoing quality and size requirements for domestically produced prunes for three years, these requirements in the import regulation must continue to be suspended during this period as well.

U.S. imports of dried prunes are insignificant compared to U.S. production. In 2002, while the U.S. produced 158,000 tons of dried prunes, only 616 tons were imported. In that year, the domestically produced tonnage was over 250 times as large as the imported tonnage. In 2001, 204 tons were imported, but the U.S. produced 150,000 tons. Production was 735 times as large as imports.

In recent years, about 90 percent of U.S. imports of dried prunes have come from Argentina. Other countries that export to the United States include Chile, France, Mexico, Iran, and Turkey.

Undersized Prune Disposition Regulations

The prune administrative rules and regulations previously required handlers to have a third party inspection of each lot of undersized prunes prior to shipment into nonhuman outlets or other disposition. Under § 993.51 of the Order, inspections are performed by the Dried Fruit Association of California. These requirements also required handlers to submit to the Committee comprehensive documentation verifying that they have satisfied their undersized prune obligation.

The prune administrative rules and regulations previously limited the quantities of larger size prunes that can be used to meet a handler's undersized disposition obligation. While the Committee plans to continue to restrict the shipment of undersized prunes into human consumption outlets, the Committee continues to believe that the costs associated with the inspection and documentation of the disposal of undersized prunes may exceed the benefits. To reduce the cost and time for handlers to file reports and verify the disposition of undersized prunes through inspection, the Committee unanimously recommended removing the inspection requirements, and simplifying the documentation required from handlers to satisfy their undersized obligation as well as removing the limits on the weights of larger prunes that can be used to meet undersized obligations.

Background and Action Taken

California prune handlers are currently selling prunes in many forms to customers throughout the world. The