

majority of these sales involve sizing or processing the prunes to more stringent specifications than required under the order. Retail and wholesale buyers often visit handlers' plants in California to verify specification and quality procedures, which tend to be more stringent than the minimum outgoing quality requirements mandated in the marketing order. Handlers continue to improve the quality and outgoing inspection procedures to target the specific customer and market demands. Almost all prunes sold for consumption in the United States as prunes are pitted and packaged in consumer bags and canisters targeting much higher standards than those mandated by the marketing order.

Previously used procedures required detailed administrative notating and reporting of defect information, large numbers of line inspectors at handler plants, and tracking and segregating lots and bins of fruit to comply with the order. As a result, handlers expended significant amounts of time and money on the inspection process. Also, almost all fruit is inspected by international buyers upon receipt, and is accepted or rejected based on the fruits' condition at the time of that review, regardless of any prior inspection process or certification. Further, prunes produced in other countries must meet customer specifications and inspection criteria.

Because of increased foreign competition that sells quality-processed fruit, shifting consumer demand from natural condition to processed prunes, and increasingly competitive specifications, the minimum marketing order standards no longer reflect current industry needs. The Committee continues to believe that California prune handlers must reduce all unnecessary costs in order to remain competitive with imported fruit and to profitably sell fruit in international markets.

The mandatory outgoing inspections focused on cosmetic defects or defects that tend to be removed through steaming, pitting, or juicing the fruit. While the industry once sold primarily unprocessed prunes, consumer demand has changed and some processing is invariably required, leaving the outgoing inspection criteria inapplicable and out-dated.

With regard to import requirements, section 8e of the Act requires import regulations to be comparable to the domestic regulations, not more restrictive. Since this rule continues to suspend outgoing grade and size regulations for domestically produced prunes, and substantially relaxes the disposition and verification

requirements on undersized prunes under the order, the import regulation must continue to be suspended as well.

During the three-year suspension period, the industry will have the opportunity to develop and implement more appropriate finished product grade standards through amendments to the order and administrative rules and regulations. In the interim, the suspension of these provisions continues to ensure that these provisions are not implemented. In the absence of any additional action, the provisions will automatically come back into effect at the end of the suspension period.

At its May 1, 2003, meeting, the Committee unanimously recommended suspension of all outgoing inspection, outgoing quality, size, and labeling requirements in the marketing order and the administrative rules and regulations for three years, beginning with the start of the new crop year on August 1, 2003. The suspension of these provisions continues to reduce some administrative costs.

This rule continues to suspend in their entirety §§ 993.50(a) through (f) and 993.97 Exhibit A—Part II of the order, and §§ 993.150(a) and (b), 993.150(d) through (g)(1), 993.515, 993.516, 993.517, 993.518 of the administrative rules and regulations, as well as the import regulation specified in § 999.200. Portions of §§ 993.50(g) and 993.51 of the order, and portions of §§ 993.601 of the administrative rules and regulations continue to be suspended. These sections of the order and administrative rules and regulations pertain to the various requirements of the outgoing inspection, outgoing quality, size, and labeling requirements, and import regulation provisions.

Prune handlers opposed the previously stated undersized prune regulations because they were costly to use. Undersized prunes have marginal value as cattle feed or use in tobacco products (about \$40–\$45 per ton), and the costs of completing the required Committee paperwork and having them inspected by the DFA of California may exceed the revenue received. The industry is now also less concerned about the minimal amount of poor quality undersized prunes. Supplies of undersized prunes are now lower because of the recent tree pull programs and growers field sizing programs to drop small prune plums in the orchard, rather than deliver them to handlers.

The Committee chose to recommend removal of the limits on the quantities of larger-sized prunes that can be used to meet a handler's undersized weight disposition obligation, and the

requirement for inspection of the undersized prunes and certification of handlers' receipt of usage, because these changes eliminate certain inspection costs and reduce Committee and handler administration costs.

At the April 3, 2003, meeting, the Committee unanimously recommended modification of the undersized prune disposition provisions in the marketing order and the administrative rules and regulations, which began with the start of the new crop year on August 1, 2003. The modification of these provisions continues to reduce some committee and handler administrative costs.

This rule continues to remove § 993.150(g)(2)(i), § 993.150(g)(2)(iii), and § 993.150(g)(2)(iv) in the administrative rules and regulations. Portions of § 993.150(g)(3) continue to be amended.

### 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 action 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.

### Industry Profile

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 of less than \$750,000 and small agricultural service firms are defined as those having annual receipts of less than \$5,000,000.

Eight of the 21 handlers (38 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than \$5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over \$750,000. The