

majority of handlers and producers of California dried prunes may be classified as small entities.

In addition, there are an estimated 30 importers and one third-party entity that performed inspections under the order. USDA does not have precise information on these entities, but believes that the majority of the importers and the inspection agency are small entities.

#### Summary of Rule Change

This rule continues to suspend the outgoing prune inspection and outgoing prune quality requirements under the order and the administrative rules and regulations, and the prune import provisions for a three-year period, and continues to modify the undersized prune disposition requirements. These changes continue to be effective since the start of the new crop year on August 1, 2003, for three years. In the absence of additional rulemaking, the suspended requirements will come back into effect at the end of the three-year period.

The industry chose suspension of the outgoing inspection, outgoing prune quality and size and labeling requirements, because suspension is the quickest way to ensure relief from these regulations. During the three-year suspension period, the industry continues will have the opportunity to develop and implement more effective finished product grade standards through amendments to the order and administrative rules and regulations. It also has an opportunity to decide whether these requirements should be terminated.

Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order. Authority to modify the disposition requirements and procedures for undersized prunes in the administrative rules and regulations is provided in §§ 993.50(g) and 993.52 of the order. Authority for the import regulation is in section 8e of the Act.

#### Impact of Regulation

Regarding the impact of this rule on affected entities, this action continues the reduced reporting and recordkeeping burden on California prune handlers and continues the reduction in the Committee's and handlers' administrative costs. Also, this action continues to reduce the number of inspections performed by the inspection agency under the order. The Committee estimates that 21 California prune handlers are subject to these provisions and to filing the handler reports. Also under the prune import

regulations, it is estimated that as many as 10 importers would file forms applicable to the import regulations. The handler annual burden to file these reports is 70.04 hours, and the respondent annual burden to file reports under the import regulations is 6.05 hours. Thus, there is a potential to reducing the annual handler and importer reporting burden by 76.09 hours during the suspension period. The benefits of this final rule apply to all prune handlers and importers, regardless of their size of operation.

The forms affected by this rule are as follows: (1) Form PMC 2.2, Application for Permission to Dispose of Substandard Prunes; (2) Form PMC 2.6, Statement of Proposed Disposition of Substandard Prunes; (3) Form PMC 4.72A, Foreign Export "Notice of Substandard Prunes for Manufacturing Purposes"; (4) Form PMC 4.72B, Foreign Export "Notice of Usage of Substandard Prunes for Manufacturing Purposes"; (5) Form PMC 2.21, Application for Permission to Dispose of Undersized Prunes for Non-Human Usage; (6) Form PMC 4.71A, User's Receipt of Dried Undersized Prunes for Non-Human Usage; (7) Form PMC 4.71B, User's Certificate of Non-Human Usage of Dried Undersized Prunes; (8) Form PMC 2.63, Statement of Proposed Disposition of Undersized Prunes; (9) Form FV-170, Prune Form No. 1; and (10) Form FV-171, Prune Form No. 2.

It should be noted that if the Committee determines that these suspensions are having an unfavorable impact on the industry, it could meet and recommend rescinding the suspensions. Also, as previously mentioned, the provisions automatically come back into effect at the end of the suspension period.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were previously approved by the Office of Management and Budget, under OMB No. 0581-0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

#### Alternatives Considered

At meetings held on April 3, and May 1, 2003, the Committee and industry members discussed different alternatives to these actions. The

Committee discussed the possibility of suspending the total Federal prune marketing order, but its benefit in other areas is recognized by the industry. Another alternative discussed was to suspend all mandatory inspections (both incoming and outgoing inspections), but many on the Committee and in the industry deemed this action too extreme. Another alternative discussed was to exempt handlers from the inspection requirements if they could demonstrate that the automation of their plant assured consistent delivery of higher quality prunes, but this would not be practicable. Another alternative considered was a two-year suspension of the undersized prune regulation. This was opposed because it would increase the domestic salable tonnage and would add to the industry's oversupply.

The Committee's April 3, and May 1, 2003, meetings where the outgoing inspection, outgoing prune quality, size, and labeling requirement issues were deliberated were public meetings and widely publicized throughout the prune industry. At the April 3, 2003, meeting, the Committee recommended removing the limits on the quantity of larger-sized prunes that could be used to meet handler undersized obligations and eliminating the DFA of California undersized prune inspection and certification of receipt and usage. This was to reduce costs, including inspection fees and other Committee costs associated with mandatory inspection, and the reporting burden resulting from the inspection requirements.

All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, interested persons were invited to submit information on the regulatory and informational impacts of these changes on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on July 24, 2003. Copies of the rule were mailed by the Committee's staff to all Committee members, alternates and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended on September 22, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned