

**PART 966—TOMATOES GROWN IN FLORIDA**

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

**§ 966.234 Assessment rate.**

On and after August 1, 2001, an assessment rate of \$0.20 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: November 5, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01–28203 Filed 11–8–01; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 993**

[Docket No. FV01–993–3 FR]

**Dried Prunes Produced in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate from \$2.00 to \$2.80 per ton of salable dried prunes established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2001–02 and subsequent crop years. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** November 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Assistant or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, 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, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, 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, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2001, and continue until 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 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 increases the assessment rate established for the Committee for the 2001–02 and subsequent crop years from \$2.00 per ton to \$2.80 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 1999–2000 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 28, 2001, and unanimously recommended 2001–02 expenditures of \$403,200 and an assessment rate of \$2.80 per ton of salable dried prunes. In comparison, last year’s budgeted expenditures were \$388,000. The recommended assessment rate of \$2.80 per ton is \$.80 higher than the rate currently in effect. The \$.80 per ton increase in the assessment rate will allow the Committee to meet its 2001–02 expenses. The primary reason for the increased assessment rate is an estimated reduction in 2001–02 crop year production. The Committee estimates a 150,000 ton crop during the 2001–02 crop year. A total of 6,000 tons are not expected to be salable because of size or quality, leaving a balance of 144,000 salable tons. This is a 28 percent decrease in salable tonnage from last year and caused the Committee to recommend increasing its assessment rate to meet expenses.

The following table compares major budget expenditures recommended by the Committee on June 28, 2001, and major budget expenditures in the revised 2000–01 budget recommended on April 5, 2001.

| Budget expense categories                   | 2000-01 (revised) | 2001-02   |
|---------------------------------------------|-------------------|-----------|
| Salaries, Wages & Benefits .....            | \$225,850         | \$226,315 |
| Research & Development .....                | 30,000            | 30,000    |
| Office Rent .....                           | 28,000            | 23,300    |
| Travel .....                                | 21,000            | 20,000    |
| Reserve (Contingencies) .....               | 28,550            | 53,185    |
| Equipment Rental .....                      | 8,000             | 9,000     |
| Data Processing Stationery & Printing ..... | 5,000             | 4,000     |
| Office Supplies .....                       | 5,500             | 4,500     |
| Postage & Messenger .....                   | 5,000             | 4,500     |
| Other Expenses .....                        | 7,000             | 6,000     |
|                                             | 24,100            | 22,400    |

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 is estimated at 144,000 salable tons which should provide \$403,200 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 2000-01 crop year (currently estimated at \$51,005) for up to 5 months beyond the end of the crop year to meet 2001-02 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 established in this rule 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 will be in effect 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. The 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 2001-02 budget and those for subsequent crop years would 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 22 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. The standard for producers has been increased from \$500,000 to \$750,000 since the proposed rule was published.

An updated prune industry profile shows that 9 of the 22 handlers (41 percent) shipped over \$5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 22 handlers (59 percent) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or about 2.7 percent of the 1,205 total producers, will be considered large growers with annual receipts over \$750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001-2002 and subsequent crop years from \$2.00 per ton to \$2.80 per ton of salable dried prunes. The Committee unanimously recommended 2001-2002 expenditures of \$403,200 and an assessment rate of \$2.80 per ton of salable dried prunes. The assessment rate of \$2.80 is \$0.80 higher than the assessment rate (64 FR 50426, September 17, 1999) that has been in effect since the 1999-2000 crop year. The quantity of assessable dried prunes for the 2001-02 crop year is now estimated at 144,000 salable tons. Thus,

the \$2.80 rate should provide \$403,200 in assessment income and be adequate to meet this year's expenses. Interest income also will be available to cover budgeted expenses if the 2001-02 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 28, 2001, with major budget expenditures in the revised 2000-01 budget recommended on April 5, 2001.

| Budget expense categories                   | 2000-01 (revised) | 2001-02   |
|---------------------------------------------|-------------------|-----------|
| Salaries, Wages & Benefits .....            | \$225,850         | \$226,315 |
| Research & Development .....                | 30,000            | 30,000    |
| Office Rent .....                           | 28,000            | 23,300    |
| Travel .....                                | 21,000            | 20,000    |
| Reserve (Contingencies) .....               | 28,550            | 53,185    |
| Equipment Rental .....                      | 8,000             | 9,000     |
| Data Processing Stationery & Printing ..... | 5,000             | 4,000     |
| Office Supplies .....                       | 5,500             | 4,500     |
| Postage & Messenger .....                   | 5,000             | 4,500     |
| Other Expenses .....                        | 7,000             | 6,000     |
|                                             | 24,100            | 22,400    |

The Committee reviewed and unanimously recommended 2001-02 expenditures of \$403,200. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee. An alternative to this action would be to continue with the \$2.00 per ton assessment rate, but the reduced anticipated crop size would not be sufficient to generate monies to fund all the budget items. The assessment rate of \$2.80 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 2000-01 crop year (currently estimated at \$51,005) for up to 5 months beyond the end of the crop year to fund 2001-02 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (\$ 993.81(c)). Anticipated assessment income and interest income during 2001-02 will be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 2001-02 season should average about \$763 per salable ton of dried prunes. This is \$87 less than the \$850 figure quoted in the proposed rule. Based on estimated shipments of 144,000 salable tons, assessment revenue during the 2001-02 crop year is still expected to be less than

1 percent of the total expected grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on all handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. 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.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 20, 2001 (66 FR 43534). Copies of the proposed rule were also mailed or sent via facsimile to all prune handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending September 19, 2001, was provided for interested persons to respond to the proposal. 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 address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2001-02 crop year begins on August 1,

2001, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year. Further, handlers are aware of this action which was recommended at a public meeting. Also, 30-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 993

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

#### PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 993.347 is revised to read as follows:

##### **§ 993.347 Assessment rate.**

On and after August 1, 2001, an assessment rate of \$2.80 per ton is established for California dried prunes.

Dated: November 5, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01-28204 Filed 11-8-01; 8:45 am]

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#### DEPARTMENT OF ENERGY

##### **Office of Energy Efficiency and Renewable Energy**

##### **10 CFR Part 431**

**[Docket No. EE-RM-96-400]**

**RIN 1904-AB11**

##### **Energy Efficiency Program for Certain Commercial and Industrial Equipment: Extension of Time for Electric Motor Manufacturers To Certify Compliance With Energy Efficiency Standards**

**AGENCY:** Office of Energy Efficiency and Renewable Energy; Department of Energy.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** This procedural rule amends the compliance certification section of subpart G, Certification and Enforcement, of Title 10 Code of Federal Regulations Part 431, by revising the deadline date from November 5, 2001 to June 7, 2002, for all electric motor manufacturers to certify compliance to

the Department of Energy that their motors meet the applicable energy efficiency standards.

**DATES:** This rule is effective November 9, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-41, 1000 Independence Avenue, SW., Washington, DC 20585-0121, telephone (202) 586-8654, telefax (202) 586-4617, or: [jim.raba@ee.doe.gov](mailto:jim.raba@ee.doe.gov).

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9526, telefax (202) 586-4116, or: [eugene.margolis@hq.doe.gov](mailto:eugene.margolis@hq.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Introduction**

Section 345(c) of the Energy Policy and Conservation Act of 1975 (EPCA) requires "manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable [nominal full load efficiency standard]" (42 U.S.C. 6316(c)). The Department of Energy (Department) construes the statutory language to provide manufacturers with two equivalent ways to fulfill the certification requirement: (1) manufacturers may certify, through an independent testing program nationally recognized in the United States, that such motor meets the standards; or (2) manufacturers may certify, through an independent certification program nationally recognized in the United States that such motor meets the standards. The Department is of the view that section 345(c) does not require preference for one program over the other.

Section 431.24(a)(5) of 10 CFR Part 431, sets forth procedures by which a manufacturer may have a certification program or an accredited laboratory, which the Department has classified as nationally recognized, certify the energy efficiency of a manufacturer's electric motors. Section 431.123(a) of 10 CFR Part 431 states that no electric motor "subject to an energy efficiency standard set forth in subpart C of this part" may be distributed in commerce unless it is covered by a Compliance Certification, and that the Compliance Certification must be submitted to the Department not later than November 5, 2001.