

Rules and Regulations

Federal Register

Vol. 68, No. 194

Tuesday, October 7, 2003

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03-993-2 FIR]

Dried Prunes Produced in California; Temporary Suspension of the Prune Reserve and the Voluntary Producer Prune Plum Diversion Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the prune reserve and the voluntary producer prune plum diversion provisions in the California Dried Prune Marketing Order (order) and the administrative rules and regulations related to volume control restrictions for a five-year period. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (PMC). Suspension of these provisions ensures that volume control restrictions will not be implemented under the order. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or continue unchanged. In the absence of additional rulemaking to modify or terminate these provisions, they will come back into effect automatically at the end of the five-year period.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or 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, 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 for five years of all

provisions in the order and administrative rules and regulations concerning the prune reserve and voluntary producer prune plum diversion. This action was unanimously recommended by the PMC. This rule will continue to ensure that reserve percentages are not established, and that a prune plum diversion program is not implemented pursuant to these provisions. During the five-year suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain unchanged.

Marketing Order Authority To Suspend

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

Volume Regulation Provisions

Section 993.54 of the order provides authority for volume regulation through establishing salable and reserve percentages of prunes received by handlers (prune reserve). When the prune reserve is in effect, the salable percentage of the California prune crop may be sold to any market while the reserve percentage must be held by the handlers for the account of the PMC. Reserve prunes may be sold to meet either domestic or foreign trade demand or for use in outlets noncompetitive with normal outlets for salable prunes. Net proceeds from sales of reserve prunes are ultimately distributed to producers. The prune reserve is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns.

Voluntary Prune Plum Diversion Program

Section 993.62 of the order authorizes a producer diversion program, which prune producers may use when a prune reserve is implemented. Section 993.162 of the administrative rules and regulations specifies implementing procedures. Under the producer diversion program, any prune producer may divert prune plums of his own production for eligible purposes and receive a diversion certificate from the PMC. The certificate may be submitted to any handler in lieu of reserve prunes

and the handler may apply the quantity represented by the certificate towards his reserve obligation. Participation in this program reduces a producer's expenses to convert prune plums into dried prunes that will ultimately be placed in a relatively low value prune reserve.

Background and Action Taken

The prune reserve was last implemented in 1974 and the producer diversion program was last used in 1971. These programs were controversial in the 1970's and have become increasingly so since then. Some of the independent prune handlers who are also prune producers now oppose any regulatory marketing restrictions because they want to sell all of the prunes they have produced. If additional tonnage were needed, such handlers would buy prunes from other producers to meet their market demand. In addition, if a prune reserve is implemented, it may require these handlers to contract for additional tonnage in order to meet their reserve obligation.

Recently in 2001, when the PMC recommended using supply control techniques, some of the independent handlers and producers opposed the use of these programs. Ultimately, the supply control programs were not implemented at that time. Also, some in the industry do not support the use of these supply control provisions because the industry has successfully reduced crop sizes through other means.

Through industry and USDA funded tree pull programs, the industry has removed over 18,000 acres of prune plum trees; thus reducing the annual prune production by at least 27,000 tons of prunes over the five-year suspension period.

During the five-year suspension period, the industry will have the opportunity to either recommend that these provisions be terminated through rulemaking procedures, or recommend modifications to the provisions to make them more acceptable to all segments of the industry. 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 five-year suspension period.

The PMC unanimously recommended this action at an April 3, 2003, meeting. This rule continues to suspend §§ 993.21d, 993.36(i), 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, and 993.65 of the order, and §§ 993.156, 993.157, 993.158, 993.159, 993.162,

993.165 and 993.172(e) of the administrative rules and regulations in effect under the order. Portions of §§ 993.33 and 993.41(b) of the order and portions of §§ 993.173(a)(6), 993.173(b)(3), and 993.173(c)(1) 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 prune reserve and producer diversion programs.

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

Summary of Rule Change

This rule continues to suspend for five years all provisions in the order and administrative rules and regulations concerning the prune reserve and

voluntary producer diversion programs. These supply control programs have been and continue to be controversial in the industry. Furthermore, the industry has successfully reduced crop sizes through other means. Through industry and USDA funded tree pull programs, over 18,000 acres of prune plum trees have been removed, reducing production by at least 27,000 tons over the five-year suspension period.

This rule continues to ensure that the reserve and diversion volume control programs will not be implemented for the five-year suspension period. Also, during the suspension period, the industry will have the opportunity to determine whether these provisions should be modified, terminated, or remain the same. In the absence of further rulemaking, these provisions will automatically come back into effect at the end of the suspension period. Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action could reduce the reporting and recordkeeping burden on California prune handlers and producers and reduce some of the PMC's administrative costs. Although the prune reserve and producer diversion programs have not been implemented since the 1970s and handlers and producers have not been required to file reports pertaining to these programs, suspending these provisions continues to reduce the potential reporting burden on handlers and producers. Suspension of the provisions continues to eliminate the possibility of requiring handlers and producers to file reports associated with the programs. It also continues to reduce some of the potential PMC administrative costs of managing these programs. The PMC estimates that 21 California prune handlers are subject to these provisions and to filing reports pertaining to these programs. Also, if a producer diversion program was implemented, it is estimated that as many as 300 producers would file forms applicable to this program. If handlers filed reports under the prune reserve program, their estimated burden would be 57 hours. If growers filed reports under the diversion program, their estimated burden would be 75.58 hours. Thus, there is a potential for reducing the estimated annual burden of 132.58 hours. The benefits of this rule apply to all prune handlers and producers, regardless of their size of operation.

The forms applicable to these programs are as follows: (1) Form PMC 4.1, Reserve Prunes Held—Handler; (2) Form PMC 4.2, Prune Reserve Tonnage Sales Agreement; (3) Form PMC 4.5, Certificate of Insurance Coverage; (4) Form PMC 5.1, Notice of Proposed Intent to Store Reserve Prunes; (5) Form PMC 8.44, Request for Replacement of Draft; (6) Form PMC 8.443, Claim for Reserve Pool Proceeds; (7) Form PMC 9.1, Notification of Desire for Deferment of Reserve Withholding; (8) Form PMC 10.1, Application for Prune Plum Diversion; (9) No form number, Proof of Diversion; and (10) No form number, Notification of Report of Diversion.

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

Alternatives Considered

The PMC and industry members discussed different alternatives to this action at the PMC's April 3, 2003, meeting. The PMC discussed the possibility of amending the marketing order provisions relating to reserve and producer diversion programs but decided to eliminate the prune reserve and producer diversion provisions from the order and administrative rules and regulations in a more timely fashion. During the suspension, the industry will have the opportunity to consider possible order amendments to the volume control provisions. Another alternative was to terminate the marketing order. Many on the PMC and in the industry deemed termination too drastic an action and preferred to preserve the marketing order and make necessary changes to it to meet current industry needs and to reflect current industry marketing practices.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the applicable forms being suspended by this rule were approved previously by the Office of Management and Budget and assigned 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, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The PMC's April 3, 2003, meeting where this issue was deliberated was widely publicized throughout the prune

industry and all interested persons were invited to attend the meeting and participate in the industry's deliberations. Like all PMC meetings, this meeting was a public meeting and all entities, both large and small, were able to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on July 9, 2003. The PMC's staff mailed copies of the rule to all PMC 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 8, 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 address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the PMC's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 40754, July 9, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

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

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 993 which was published at 68 FR 40754 on July 9, 2003, is adopted as a final rule without change.

Dated: October 1, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-25312 Filed 10-6-03; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AH27

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®-24P, -52B, -61BT, -32PT, and -24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the "List of approved spent fuel storage casks" to include Amendment No. 6 in Certificate of Compliance (CoC) Number 1004. Amendment No. 6 will add the NUHOMS®-24PHB cask design to the Standardized NUHOMS® System. The NUHOMS®-24PHB cask will permit a part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license.

DATES: The final rule is effective December 22, 2003, unless significant adverse comments are received by November 6, 2003. A significant adverse comment is one which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH27) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail