

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Doc. No. AMS-FV-10-0057; FV10-993-1 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Prune Marketing Committee (Committee) for the 2010–11 and subsequent crop years from \$0.16 to \$0.27 per ton of salable dried prunes handled. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 23, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public.

Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Andrea Ricci, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail:

[Andrea.Ricci@ams.usda.gov](mailto:Andrea.Ricci@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [ntoinete.Carter@ams.usda.gov](mailto:ntoinete.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 110 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 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.”

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 proposed herein would be applicable to all assessable dried prunes beginning on August 1, 2010, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings may 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’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 would increase the assessment rate established for the Committee for the 2010–11 and subsequent crop years from \$0.16 to \$0.27 per ton of salable dried prunes handled.

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 2009–10 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 24, 2010, and unanimously recommended 2010–11 expenditures of \$58,353 and an assessment rate of \$0.27 per ton of salable dried prunes. In comparison, last year’s budgeted expenditures, as amended in March of 2010, were \$57,756. The assessment rate of \$0.27 is \$0.11 higher than the rate currently in effect.

The Committee recommended the higher assessment rate based on a production estimate of 150,000 tons of salable dried prunes for this year, which is substantially less than the 165,488 tons produced last year. At the proposed assessment rate the assessment income for the 2010–11 crop year would be \$40,500. The Committee’s proposed

budget of expenses of \$58,353 includes a twenty percent increase in personnel expenses, and a nine percent decrease in operating expenses. Combined personnel and operational expenses are about eleven percent higher than last year, or about \$42,511. The Committee also included \$15,842 for contingencies, which is substantially less than the \$19,526 included for last year's budget. Most of the Committee's expenses reflect its portion of the joint administration costs of the Committee and the California Dried Plum Board (CDPB). Based on the Committee's reduced activities in recent years, it is funding only five percent of the shared expenses of the two programs. This funding level is similar to that of last year. The Committee believes that extra assessment income carried in from the 2009 crop year, plus interest income and 2009 assessment income, would be adequate to cover its estimated expenses of \$58,353.

The major expenditures recommended by the Committee for the 2010–11 year include \$31,781 for salaries and benefits, \$10,730 for operating expenses, and \$15,842 for contingencies. Budgeted expenses for these items in 2009–10 were \$26,450, \$11,780, and \$19,526, respectively.

The assessment rate recommended by the Committee was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2010–11 crop year, and estimated interest income. As mentioned earlier, dried prune production for the year is estimated at 150,000 salable tons, which should provide \$40,500 in assessment income. Income derived from handler assessments, plus interest income, and excess funds from the 2009–10 crop year would be adequate to cover budgeted expenses. The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2009–10 crop year (currently estimated at \$17,847) for up to 5 months beyond the end of the crop year to meet the 2010–11 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2010–11 budget and those for subsequent crop year would be reviewed and, as appropriate, approved by USDA.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial 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.

There are approximately 900 producers of dried prunes in the California 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 less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

Committee data indicates that about 64 percent of the handlers ship under \$7,000,000 worth of dried prunes. Dividing the average prune crop value for 2009 reported by the National Agricultural Statistics Service (NASS) of \$188,400,000 by the number of producers (900) yields an average annual producer revenue estimate of about \$209,333. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent crop

year from \$0.16 to \$0.27 per ton of salable dried prunes. The Committee unanimously recommended 2010–11 expenditures of \$58,353 and an assessment rate of \$0.27 per ton of salable dried prunes. The proposed assessment rate of \$0.27 is \$0.11 higher than the 2009–10 rate. The quantity of assessable dried prunes for the 2010–11 year is estimated at 150,000 tons. Thus, the \$0.27 rate should provide \$40,500 in assessment income. The Committee believes that extra assessment income carried in for the 2009 crop year, plus interest income and 2010 assessment income, would be adequate to cover its estimated expenses of \$58,353.

The major expenditures recommended by the Committee for the 2010–11 year include \$31,781 for salaries and benefits, \$10,730 for operating expenses, and \$15,842 for contingencies. Budgeted expenses for these items in 2009–10 were \$26,450, \$11,780, and \$19,526, respectively.

The Committee recommended the higher assessment rate based on a production estimate of 150,000 tons of salable dried prunes for this year, which is substantially less than the 165,488 tons produced last year. At the proposed assessment rate the assessment income for the 2010–11 crop year would be \$40,500. The Committee's proposed budget of expenses of \$58,353 includes a twenty percent increase in personnel expenses, and a nine percent decrease in operating expenses. Combined personnel and operational expenses are about eleven percent higher than last year, or about \$42,511. The Committee also included \$15,842 for contingencies, which is substantially less than the \$19,526 included for last year's budget. Most of the Committee's expenses reflect its portion of the joint administration costs of the Committee and the California Dried Plum Board (CDPB). Based on the Committee's reduced activities in recent years, it is funding only five percent of the shared expenses of the two programs. This funding level is similar to that of last year. The Committee believes that extra assessment income from the 2009 crop year, plus interest income and 2010 assessment income, would be adequate to cover its estimated expenses of \$58,353.

The Committee reviewed and unanimously recommended 2010–11 expenditures of \$58,353, which includes an increase in personnel expenses and a decrease in operational expenses. Prior to arriving at its budget of \$58,353, the Committee considered information from various sources, including the Committee's Executive Subcommittee to include the

administrative expenses shared between the Committee and the CDPB in recent years. The assessment rate of \$0.27 per ton of salable dried prunes was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2010–11 crop year, and estimated interest income. An alternative to this action would be to continue with the \$0.16 per ton assessment rate. However, an assessment rate of \$0.27 per ton of salable dried prunes, along with excess funds from the 2009–10 crop year, is needed to provide enough income to fund the Committee's operations.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2008–09 crop year was \$1,500 per ton, that the grower price for the 2009–10 crop year was \$1,200 per ton, and that the grower price for the 2010–11 crop year could range between \$1,000 and \$1,100 per ton of salable dried prunes. Based on an estimated 150,000 salable tons of dried prunes, assessment revenue as a percentage of producer prices during the 2010–2011 crop year is expected to range between .027 and .025 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be 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 24, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California 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.

AMS is committed to complying with the E-Government Act, to promote the

use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

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

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/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2010–11 crop begins on August 1, 2010, 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; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

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

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

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be 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, 2010, an assessment rate of \$0.27 per ton of salable dried prunes is established for California dried prunes.

Dated: August 17, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–20981 Filed 8–23–10; 8:45 am]

**BILLING CODE 3410–02–P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 26**

[Docket No. PRM–26–4; NRC–2010–0269]

#### **California Association of Marriage and Family Therapists; Notice of Receipt of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated March 24, 2010, and supplemented on July 12, 2010, filed by the California Association of Marriage and Family Therapists (CAMFT) (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM–26–4. The petitioner requests that the NRC amend its regulations to add marriage and family therapists (MFT) as substance abuse experts (SAEs).

**DATES:** Submit comments by November 8, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2010–0269 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see “Submitting Comments and Accessing Information” in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

*Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC–2010–0269. Address questions about NRC dockets to Carol Gallagher, telephone 301–492–3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

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

*E-mail comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

*Hand Deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (Telephone 301–415–1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.