

Rules and Regulations

Federal Register

Vol. 65, No. 46

Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00-993-1 FIR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule realigning the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee) under Marketing Order No. 993. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. This rule continues in effect the realignment of the boundaries of the seven independent producer districts. Due to shifts in the production areas, the former production districts for independent producer representation on the Committee were out of balance. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

EFFECTIVE DATE: April 7, 2000.

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, CA 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) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: 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 produced 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 (Department) 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 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary 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 the Secretary 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 the Secretary'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 modifications to language in the order's

administrative rules and regulations to realign the boundaries of seven districts established for independent producer representation on the Committee. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

Paragraph (a) of § 993.128 of the order's administrative rules and regulations lists and describes the boundaries of each of the seven independent grower districts. This rule continues in effect the provisions of an interim final rule that realigned those boundaries on December 30, 1999 (64 FR 72909, December 29, 1999). To be consistent with current industry demographics, this realignment ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 represent producers, 7 represent handlers, and 1 represents the public. The 14 producer member positions are apportioned between cooperative producers and independent producers. The apportionment, insofar as is practicable, is the same as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28(a) of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years.

In recent years, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in other districts. Thus, redistricting was needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule continues in effect the establishment of new district alignments as shown below:

Dis- trict	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North) ¹ .
3	Sutter (South), Yolo.	Sutter (South) ¹ .
4	Alpine, Amador, Del Norte, El Dorado, Hum- boldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sac- ramento, Shas- ta, Sierra, Siskiyou, Sonoma, Tehama and Trinity..	Alpine, Amador, Del Norte, El Dorado, Hum- boldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sac- ramento, Shas- ta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North).	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare all other counties not in- cluded in Dis- tricts 1, 2, 3, 4, 5, 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other coun- ties not included in Districts 1, 2, 3, 4, 5, 6.

¹ The north/south boundary of Sutter County will be changed to Franklin Road.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The representation factors for the old and new districts are shown below,

based on the 1998–99 crop year (August 1–July 31) data.

Dis- trict	Representation Factor	
	Old Districts (percent)	New Districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

The redistricting allows each district to approximate the optimal representation factor while maintaining a continuous geographic boundary for each district.

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 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 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 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Last year, 13 of the 20 handlers (65%) shipped under \$5,000,000 of dried prunes and could be considered small handlers. An estimated 1,141 producers (91 percent) of the 1,250 producers could be considered small growers with annual income less than \$500,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues in effect a realignment of the boundaries of the

seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this realignment ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Shifts in the prune production area over time have lead to greater differences among the districts than is desirable for equitable independent producer representation. As shown below, prior to the most recent realignment, District 1 represented less than 10% of California's independent prune producers/production while District 5 represented nearly 24% as previously defined. The realignment has provided for more equitable representation.

The representation factors for the old and new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

Dis- trict	Representation Factor ¹	
	Old Districts (percent)	New Districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

¹ The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The economic vagaries of prune production are responsible for the imbalance among production districts. When the average grower return per ton reached \$1,121 in 1993, prune tree sales by nurseries jumped to 1.5 million trees from a normal maintenance and replacement level of about 300,000 trees. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in others. Non-bearing acreage increased from 8,000 acres in 1993 to 26,000 acres in 1998.

More recently, grower prices have steadily declined from 1993's peak of \$1,121 per ton to \$763 in 1998. This lead to the removal of over 5,000 acres in 1998 alone. The overall result is a shift in prune production which lead to

an imbalance in the composition of independent producer districts.

The realignment of district boundaries yields more equitable representation. The representation factors for the districts ranged from 9.75% to 23.97%. The revised alignment narrows this range to 10.33% to 16.87%. The California prune industry considered other district alignments; however, none would have improved the balance among districts as much as the realignment implemented. Since the weather-reduced 1998–99 prune crop (102,000 tons) was the smallest since 1986, the Committee also analyzed the representation factor on the more typical 1997–98 crop (205,000 tons) to ensure that the short crop year did not produce atypical results. The results were consistent as far as each district's percent of the total. Another alternative considered was to do nothing. However, this would not have done anything to correct the representation factor imbalance, and this was not acceptable.

The Committee unanimously recommended this change at its November 30, 1999, meeting. Since the redistricting in 1994, the number of producers and volume of production in most districts changed causing imbalances among some districts. Thus, redistricting was needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule continues in effect new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo
2	Sutter (Central)	Sutter (North) ¹
3	Sutter (South), Yolo.	Sutter (South) ¹
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity
5	Butte, Sutter (North).	Butte
6	Yuba	Yuba

District	Counties in prior district alignment	Counties in new district alignment
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6

¹ The north/south boundary of Sutter County will be changed to Franklin Road.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. All independent producers regardless of size will continue to have representation and the overall representation will be more equitable as previously explained. There will be no additional costs generated by this rule. Since this rule affects only independent producers, there is no expected impact on handlers.

This rule continues in effect the realignment of the boundaries of seven independent grower districts. This realignment allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large entities. 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, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, 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 November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 22 members, of which 7 are handlers, 14 are producers and 1 is a public representative, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Ad-Hoc Redistricting Subcommittee met on November 2, 1999, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on December 29, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended January 28, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <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 Committee's unanimous recommendation and other information, it is found that finalizing the interim final rule, without change, as hereinafter set forth and published in the **Federal Register** (64 FR 72909, December 29, 1999), 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 64 FR 72909 on December 29, 1999, is adopted as a final rule without change.

Dated: March 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–5610 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P