

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 2008 (73 FR 50188). Copies of that rule were also mailed or sent via facsimile to all date handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 27, 2008, and 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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.

#### List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 987 which was published at 73 FR 50188 on August 26, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–29597 Filed 12–12–08; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. AMS–FV–08–0060; FV08–993–1 FIR]

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

**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 which decreased the assessment rate established for the Prune Marketing Committee (Committee) for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* January 14, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Maureen Pello, Assistant Regional Manager, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: [Maureen.Pello@usda.gov](mailto:Maureen.Pello@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

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

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, 2008, 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'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 action that decreased the assessment rate established for the Committee for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 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 26, 2008, and unanimously recommended an assessment rate of \$0.30 per ton of salable dried prunes and expenditures totaling \$51,587 for the 2008–09 crop year. In comparison, last year's approved expenses were \$102,523. The assessment rate of \$0.30 per ton of salable dried prunes is one-half of the rate previously in effect.

The Committee recommended a lower assessment rate because the 2008–09 crop is estimated at 120,000 tons, which is over 35,000 tons larger than the 2007–08 crop. Income generated from the lower assessment rate combined with excess assessment income carried into the new crop year should be adequate to cover the Committee's 2008–09 expenses.

The Committee's budget of expenses of \$51,587 includes a decrease in personnel expenses, and a slight decrease in operating expenses. Combined salaries and expenses are almost 50 percent lower than last year, or about \$26,248. The Committee also included \$12,446 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative 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 5 percent of the shared expenses of the two programs. This level was reduced from last year's level of 10 percent to reflect a more accurate figure. The Committee believes that extra assessment income carried in from the 2007 crop year, plus interest income and 2008 assessment income, is adequate to cover its estimated expenses of \$51,587.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$12,446 for contingencies. For the 2007–08 crop year, the Committee's budgeted expenses were \$50,505 for salaries and benefits, \$15,075 for operating expenses, and \$36,943 for contingencies.

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 2008–09 crop year, and estimated income from other sources such as interest. Dried prune

production for the year is estimated to be 120,000 salable tons, which should provide \$36,000 in assessment income at \$0.30 per ton of salable dried prunes. Income derived from handler assessments, plus excess funds from the 2007–08 crop year should be adequate to cover budgeted expenses.

The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2007–08 crop year (currently estimated at \$15,487) for up to 5 months beyond the end of the crop year to meet 2008–09 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

The assessment rate 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 is effective 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. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committees' 2008–09 budget and those for subsequent crop years will 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.

There are approximately 800 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the

marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those whose annual receipts are 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 \$6,500,000 worth of dried prunes. Dividing the average prune crop value for 2007–08 reported by the National Agricultural Statistics Service (NASS) of \$111,650,000 by the number of producers (800) yields an average annual producer revenue estimate of about \$139,562. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes.

The Committee met on June 26, 2008, and unanimously recommended estimated expenses for 2008–09 of \$51,587 and a decreased assessment rate of \$0.30 per ton of salable dried prunes. The Committee's recommended budget was based on a decrease in personnel expenses and a decrease in operating expenses. Combined salaries and expenses are almost 50 percent lower than last year, or about \$26,248. The Committee also included \$12,446 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the CDPB. Based on the Committee's reduced activities in recent years, it is funding only 5 percent of the shared expenses of the two programs. This level was reduced from last year's level of 10 percent to reflect a more accurate figure. The Committee believes that extra assessment income carried in from the 2007 crop year, plus interest income and 2008 assessment income, is adequate to cover its estimated expenses of \$51,587.

The assessment rate of \$0.30 per ton of salable dried prunes is one-half of the rate previously in effect. The quantity of salable dried prunes for the 2008–09 crop year is currently estimated at 120,000 tons, compared to 95,000 tons of salable dried prunes for the 2007–08 crop year.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$12,446 for contingencies. Budgeted expenses for these items in 2007–08 were \$50,505 for salaries and benefits, \$15,075 for

operating expenses, and \$36,943 for contingencies.

The 2008–09 assessment rate 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 2008–09 crop year, and estimated income from other sources such as interest. Therefore, the Committee recommended an assessment rate of \$0.30 per ton of salable dried prunes.

Prior to arriving at its budget of \$51,587, the Committee considered information from various sources, including the Committee's Executive Subcommittee. The Executive Subcommittee reviewed the administrative expenses shared between the Committee and the CDPB in recent years. Accordingly, the Executive Subcommittee recommended reducing the share of expenses allocated to the Committee from 10 to 5 percent. The Executive Subcommittee then recommended the \$51,587 budget and \$0.30 per ton assessment rate to the Committee. The Committee recommended the same budget and assessment rate to USDA.

Section 993.81(c) of the order provides the Committee the authority to use excess assessment funds from the 2007–08 crop year (estimated at \$15,487) for up to 5 months beyond the end of the crop year to meet 2008–09 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

To calculate the percentage of grower revenue represented by the assessment rate for 2007, the assessment rate of \$0.60 per ton is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2007–08 crop year as a percentage of grower revenue of .05 percent (\$0.60 divided by \$1,450 per ton). NASS data for 2008 is not yet available. However, applying the same calculations above using the average grower price for 2005–07 would result in estimated assessment revenue as a percentage of total grower revenue of .02 percent for the 2008–09 crop year (\$0.30 divided by \$1,437 per ton). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2008.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 26, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action 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.

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.

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.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 2008 (73 FR 50188). Copies of that rule were also mailed or sent via facsimile to all prune handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 27, 2008, and 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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.

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

Prunes, 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 73 FR 50188 on August 26, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–29598 Filed 12–12–08; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 71

[Docket No. FAA–2008–1076; Airspace Docket No. 08–ANE–102]

##### Amendment to Class E Airspace; Rutland, VT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule, request for comments.

**SUMMARY:** This action revises the Class E Airspace at Rutland-Southern Vermont Regional (RUT); Rutland, VT to provide adequate controlled airspace for those aircraft using Instrument Approach Procedures to the airport. The IRA NDB has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed. This rule also imparts a technical amendment to change the name of the airport from Rutland State Airport to Rutland-Southern Vermont Regional. This action will enhance the safety and airspace management around Rutland-Southern Vermont Regional.

**DATES:** Effective 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 29, 2009.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–1076; Airspace Docket No. 08–ANE–102, at the beginning of your