Dated: June 4, 2001.

Robert E. Taylor,

Clerk of the Board.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV01–993–1 FR]

Dried Prunes Produced in California; Undersized Regulation for the 2001–02 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2001–02 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allows handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes by approximately 3,400 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

EFFECTIVE DATE: August 1, 2001 through July 31, 2002.

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, 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, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; 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, 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 608c(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 final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2001–02 crop year for supply management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 24/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 2001, through July 31, 2002, and was unanimously recommended by the Committee at a November 29, 2000, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. * * * Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable

to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000. With larger than desired carryin inventories and a 2000–01 prune crop of about 211,300 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop size of about 172,000 natural condition tons and reduced shipments during the 1999–2000 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2000, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2001–02 crop year for supply management purposes. This regulation will be in effect from August 1, 2001, through July 31, 2002.

The Committee estimated that there will be an excess of about 41,476 natural condition tons of dried prunes as of July 31, 2001. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99, 1999–2000, and 2000–01 crop years. It is estimated that approximately 3,400 natural condition tons of small prunes will be removed from human consumption channels during the 2001–02 crop year as a result of this rule. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2001–02 crop year, and provide an adequate carryout on July 31, 2002, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2001–02 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 299,420 natural condition tons by the year 2005; (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); and (4) California's continued excess inventory situation. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The changes to the undersized regulation for the 2001–02 crop year are the result of these deliberations, and the Committee's desire to gradually bring supplies in line with market needs.

The industry's oversupply situation is expected to continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 22,000 acres during the 1999–2000 crop year. The 1996–97 through 1999–2000 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10-years, the average was 2.1 tons per acre.

The 2000–01 dried prune crop is expected to be 211,300 natural condition tons. Another large crop as high as 220,000 natural condition tons is expected for the 2001–02 crop year, partly because of an anticipated increase in bearing acreage.

The 1997–98 crop year producer prices for the 24/32 size French prunes have been about $40–$50 per ton, about $260–$270 per ton below post harvest costs. During the 2000–01 crop year, feedlots are paying about $35 to $40 per ton for the 24/32 size French prunes, which is about $270–275 per ton below post harvest costs. The lower producer prices are expected to continue as an incentive for production of larger size prunes. The larger sizes will help the industry better meet the increasing market demand for larger-sized pitted prunes.

The 1998–99, 1999–2000 and 2000–01 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2000, was 65,131 natural condition tons, and about 3,400 natural condition tons of dried prunes are expected to be removed from the 2000–01 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented

during the 2001–02 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2001–02 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e. increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2001–02 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is volume control, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

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 1,250 producers of dried prunes in the production area and approximately 22 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 of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 22 handlers (41%) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 22 handlers (59%) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 109 producers, or less than 9% of the 1,250 total producers, could be considered large growers with annual incomes over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This final rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2001–02 crop year for inventory management purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2000–01 are expected to remove only 3,449 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 41,400 natural condition tons of dried prunes on July 31, 2001. Implementation of the larger openings in 2001–02 is expected to reduce that surplus by about 3,400 tons.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large; but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for large entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 3,400 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2000, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers of these small sizes is quite bleak with producers losing about $270–$275 on every ton delivered to handlers. During the 2000–01 crop year, the feedlot prices for 24/32 screen French prunes range between $35 and $40 per ton. This price is a little lower than the $40–50 price during the 1998–99 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $270–$275 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories should probably result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes

produced in California from human consumption outlets will eliminate an estimated 3,400 tons of small-sized dried prunes during the 2001–02 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 65,131 tons of natural condition prunes on July 31, 2000, the end of the 1999–2000 crop year. The 65,131 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2000–01 inventory surplus of about 24,000 tons. The undersized regulation will help reduce the surplus, but the anticipated large 2001–02 prune crop is expected to worsen the supply imbalance.

One of the primary reasons for this rulemaking action is that the dried prune industry continues to be plagued by high carryin inventories. California prune handlers estimate that 82,286 tons of prunes (natural condition) will be inventoried at the end of the 2000–01 crop year. This will result in a surplus of 41,476 tons over the industry's desired carryout of 40,810 tons.

Increasing the screen openings is an attempt to moderately reduce and control the marketable production and carryin inventory. If the marketable supply and the carryin inventory are both reduced, then prices may be expected to increase. If no action is taken, rising production levels, high inventories, and low grower prices will continue.

To assess the impacts that regulation has on the prices growers receive for their product, an econometric model has been estimated. The two variables of interest in this model are marketable production and carryin inventory. Both of the estimated parameters for these variables are negative and statistically significant. This provides evidence that reducing the marketable supply and the carryin inventory will benefit all growers and handlers regardless of size.

Increasing the undersized openings will result in a reduced level of marketable production. The Committee estimates that marketable production will be reduced by 3,400 tons, or 2.2 percent. If marketable production for the 2001–02 crop year is reduced by 2.2 percent, the model suggests an increase in prices of approximately 0.9 percent compared to taking no action. Although increasing the undersized openings will only have a modest effect on marketable production, price increases will result. This action will not only help reduce the oversupply situation, but improve the quality of the manufactured prune products by removing the smaller, less desirable prunes from the supply chain.

Without increasing the undersized openings, the industry could be expected to continue to build unwanted inventories. These inventories have a depressing effect on the grower prices. The econometric model shows that, for every 1 percent increase in carryin inventories, a decrease in grower prices of 0.12 percent occurs.

This action will not result in a shortage of prunes for either retail or food service outlets. Inventories are expected to remain above desired levels and marketable production is anticipated to be in excess of demand. Additionally, this action is not expected to have a significant impact on retail or food service outlet prices.

In summary, increasing the openings in the sizing screens may reduce the volume of marketable production and decrease the carryin inventory. If the rule change accomplishes these two intended effects, the model shows that season average prices will be slightly higher than if the screen openings remain unchanged. A higher season-average price should benefit all producers regardless of size.

As the marketable dried prune production and surplus prune inventories are reduced through this rule, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of $1,140 per ton to a low of $778 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2000–01 season is expected to be about the same as the 1999–2000 season average producer price of $892 per ton, or about 42 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. A third alternative discussed was to advance to a $^{25}/_{32}$ screen undersized regulation for French prunes. However, handlers expressed concern that this will reduce the amount of manufacturing prunes available for the manufacture of prune juice and concentrate. This will increase the prices of these products and could encourage increased imports of foreign prune concentrate, which could be converted into prune juice and sold cheaper than California packed juice. This possibility may be explored in more detail at a future meeting when a thorough analysis is made as to what effect this change will have on the prune industry. The first two initiatives were not supported because they will not specifically eliminate the smallest, least valuable prunes, which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of $^{23}/_{32}$ of an inch for French prunes and $^{28}/_{32}$ of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to $^{24}/_{32}$ of an inch in diameter for French prunes and $^{30}/_{32}$ of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any 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 Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the 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 29, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, March 6, 2001, (66 FR 13454). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 16, 2001. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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 matter 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

Marketing agreements, Plums, Prunes, 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. A new section 993.408 is added to read as follows:

§ 993.408 Undersized prune regulation for the 2001–02 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2001–02 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, $^{24}/_{32}$ of an inch in diameter; for non-French prunes, $^{30}/_{32}$ of an inch in diameter.

Dated: June 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–14291 Filed 6–4–01; 10:42 am]

BILLING CODE 3410–02–U

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107 and 121

Size Eligibility Requirements for SBA Financial Assistance and Size Standards for Agriculture

AGENCY: Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This final rule implements legislative changes to size eligibility requirements for assistance from Small Business Investment Companies (SBICs) and Certified Development Companies (CDCs), and for the Agriculture industry.

The Small Business Investment Improvement Act of 1999, codified in sections 103(5) and 103(12) of the Small Business Investment Act of 1958, as amended, established a method for determining the eligibility of a business that is not required to pay Federal income tax at the corporate level, but that is required to pass income through to its shareholders or partners. The new method treats ''pass-through'' enterprises the same as firms that pay Federal taxes for the purpose of size standard determinations.

The Small Business Reauthorization Act of 2000, codified in section 3(a)(1) of the Small Business Act, increases the size standards used for Agriculture from $500,000 to $750,000 in average annual receipts.

DATES: The rule will become effective August 6, 2001, unless adverse comment is received prior to July 9, 2001. If an adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**. The Agency may proceed to publish a proposed rule following notice and comment procedures.

ADDRESSES: Send written comments to Gary M. Jackson, Assistant Administrator for Size Standards, U.S. Small Business Administration, 409 Third St., SW., Mail Code 6530, Washington, DC 20416; or via e-mail to *sizestandards@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

SBIC/CDC

A business seeking financial assistance from an SBIC or a CDC must qualify as a ''small-business concern'' as defined in section 103(5) of the Small Business Investment Act of 1958, as amended (the Act), and as implemented by 13 CFR 121.301(b) for CDCs and 13 CFR 121.301(c) for SBICs. For SBIC financial assistance, a business also may need to qualify as a ''smaller enterprise'' as defined in section 103(12) of the Act, and as implemented by 13 CFR 107.710(a). Each of these definitions requires a firm to meet either the size standard for its primary industry or certain net worth and net income tests. The net income tests measure the firm's average net income after Federal income taxes for the preceding 2 years.

On April 5, 1999, Public Law 106–9, the ''Small Business Investment Improvement Act of 1999'' which expands opportunities for small businesses to receive investment capital from banks and traditional investment sources, became effective. This legislation established a new method for applying the net income test to a business that is not required to pay Federal income tax at the enterprise level, but that is required to pass income through to its shareholders, partners, or other owners. This new method permits such businesses to use a specified formula to impute a tax to the business and to compute ''after-tax'' net income. The intent is to permit ''pass-through'' enterprises to be treated the same as concerns that pay Federal income taxes for purposes of SBA size standard determinations.

As authorized by Public Law 106–9, this final rule revises 121.301(b), 121.301(c) and 107.710(a) to permit a business concern that does not pay Federal income taxes at the enterprise level to deduct an imputed Federal income tax expense from its net income. The business concern computes this deduction by multiplying its net income