

# Proposed Rules

Federal Register

Vol. 88, No. 196

Thursday, October 12, 2023

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–SC–23–0021]

#### Dried Prunes Produced in California; Suspension of the Marketing Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would suspend the Federal marketing order regulating dried prunes produced in California (Order) effective at the beginning of the 2023–2024 crop year. After operating for 18 years without handling regulations, the Prune Administrative Committee (Committee) recommended the Agricultural Marketing Service (AMS) indefinitely suspend the Order. After reviewing the Committee's recommendation, AMS determined that regulatory suspension with a sunset provision of seven years is appropriate. This suspension period would extend through the end of the 2029–2030 crop year and would provide industry sufficient time to assess whether the Order's reinstatement is beneficial. If no recommendation is made by the Committee to reinstate the Order by the end of the 2029–2030 crop year, AMS would proceed to terminate the Order.

**DATES:** Comments must be received by November 13, 2023 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments may be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments may also be sent to the Docket Clerk electronically by Email: [MarketingOrderComment@usda.gov](mailto:MarketingOrderComment@usda.gov) or via the internet at: <https://www.regulations.gov>. Comments should

reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. 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:**

Jeremy Sasselli, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, or Email: [Jeremy.Sasselli@usda.gov](mailto:Jeremy.Sasselli@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed 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 produced in California. Part 993 (referred to as 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 Prune Administrative Committee (Committee) locally administers the Order and is comprised of producers and handlers of dried prunes operating within the area of production, and one public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect, prior to crop year 2023–2024.

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 United States Department of Agriculture (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 proposed rule would suspend the Order's regulatory provisions. The Committee recommended this action at its March 22, 2023, meeting. Section

993.90(a) of the Order provides that the Secretary shall terminate or suspend the operation of any or all of the provisions of the Order, whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order, and such meetings are open to the public where interested persons may express their views at these meetings. AMS reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether such recommendations would tend to effectuate the declared policy of the Act.

On May 27, 2005, following a recommendation from the Committee, AMS indefinitely suspended handling and reporting requirements under the Order, extended the temporary suspension of outgoing inspection and volume control regulations, and extended the temporary suspension of the Prune Import Regulation (70 FR 30610). Since 2005, the Committee has continued to perform the administrative duties prescribed under the Order, including the collection of assessments, conducting Committee nominations, and assessing whether to recommend a marketing policy, which may include handling regulations.

On March 22, 2023, the Committee held a public meeting to consider the future of regulation under the Order. The Committee determined that the 2005 suspension of handling and volume regulations did not adversely impact the marketing of California prunes and that there is no value in funding the administrative duties prescribed under the Order when the handling regulations and reserve control provisions are not in effect. The Committee discussed terminating the Order but rejected the idea because its members believe the sector of industry is not yet ready to terminate, given the length of time and expense that would be required to establish a new marketing order should regulation again be deemed necessary in the future. In addition, several Committee members expressed the opinion that future market conditions may warrant regulation, particularly volume control, and urged the Committee not to terminate the Order at this time. After much deliberation, the Committee voted unanimously to indefinitely suspend the Order with the expectation that the Order would either remain indefinitely suspended or AMS would at a future time act to terminate the Order if no

recommendation for reinstatement is submitted by industry. In the event of no such recommendation for reinstatement, the Committee would take the necessary steps to ensure an orderly and complete termination of the Order.

The Committee recommended to AMS the Order's suspension for an indefinite period to allow for the reinstatement of regulation to remain an option and to provide industry time to assess the market environment and other external factors affecting California prunes. Under the proposed suspension, handlers would no longer be required to pay assessments. The Committee believes this cost savings would benefit both small and large handlers, and that producers would also be relieved of some costs because such payments are often passed onto them by handlers.

After reviewing the Committee's recommendation and supporting materials, AMS included a sunset provision that if no recommendation is received by July 31, 2030, AMS would then issue a rule proposing termination of the Order. The Committee agreed that a suspension period of seven years is adequate time for the California prune industry to assess future market conditions and reestablishment of the Order, if warranted. This proposed rule would lift the portions of the Order currently under suspension and then suspend the entire Order for seven years, beginning with the 2023–2024 crop year and ending with the 2029–2030 crop year, which ends on July 31, 2030. If industry does not recommend reinstating the Order by the end of the proposed suspension period, AMS will issue a proposal to terminate the Order.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed 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 businesses 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 600 producers of dried prunes in the production area and 27 handlers subject to regulation under the Order. Small agricultural producers are defined by

the Small Business Administration (SBA) as those having annual receipts less than \$3,500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average producer price for California dried prunes for the 2021 crop was \$2,000 per ton. NASS further reported 2021 crop year production for California dried prunes was 74,000 tons. The estimated total 2021–22 crop year value of California dried prunes is \$148,000,000 (74,000 tons times \$2,000 per ton equals \$148,000,000). Dividing the estimated total crop value by the estimated number of producers (600) yields an estimated average receipt per producer of \$246,667, which is considerably lower than the \$3,500,000 SBA small agricultural producer threshold.

In addition, according to USDA Market News data, the reported average terminal market price for 2022 for California dried prunes was \$39.04 per carton. Dividing the average carton price by the 28-pound carton size yields an estimated price per pound of \$1.39. (\$39.04 average price divided by 28 pounds). Multiplying \$1.39 per pound by 2,000 pounds yields \$2,780 per ton, which, when multiplied by total estimated 2021 production of 74,000 tons, yields estimated total handler receipts of \$205,720,000. Dividing this figure by the 27 regulated handlers yields estimated average annual handler receipts of \$7,619,259, well below the \$34 million SBA threshold for small agricultural service firms. Therefore, using the above data, the majority of producers and handlers of California dried prunes may be classified as small entities.

This proposed rule would suspend all provisions of the Order starting with the 2023–2023 crop year, through the 2029–2030 crop year. On March 22, 2023, the Committee voted unanimously to indefinitely suspend the Order after determining that the 2005 suspension of handling regulations, volume control and reporting requirements did not negatively impact the marketing of California prunes and that the costs to continue the Order outweighs its benefit to industry. The Committee believes that such suspension would provide a cost savings to large and small handlers and producers.

After reviewing the Committee's recommendation and other supporting material, AMS included a sunset provision that if no recommendation for reinstatement is received during the proposed suspension period, AMS

would then proceed to terminate the Order.

This action would suspend the Federal marketing order regulating dried prunes produced in California through July 31, 2030. Authority for this action is provided in section 993.90(a) of the Order.

Committee meetings are widely publicized throughout the production area. The California dried prune industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Similarly, the March 22, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable Crops. OMB's three-year approval of the forms in the Vegetable Crops package expire March 31, 2024. AMS' submission of the renewal package prior to its expiration will retain prune forms but will drawdown the information collection burden to zero during the time when respondents will not be completing and submitting the forms during the seven-year suspension. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would 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.

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.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower 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. All written comments timely received will be considered before a final determination is made on this rule.

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

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

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 993 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. In Part 993, lift the suspension of May 27, 2005, on §§ 993.21d, 993.41, 993.48, 993.49, 993.50, 993.51, 993.52, 993.53, 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, 993.65, 993.72, 993.73, 993.74, 993.75, 993.97, 993.104, 993.105, 993.106, 993.107, 993.108, 993.149, 993.150, 993.156, 993.157, 993.158, 993.159, 993.162, 993.165, 993.172, 993.173, 993.174, 993.400, 993.409, 993.501, 993.503, 993.504, 993.505, 993.506, 993.515, 993.516, 993.517, 993.518, 993.601, and 993.602.

#### PART 993—[STAYED]

■ 3. Stay 7 CFR part 993 until July 31, 2030.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2023-22333 Filed 10-11-23; 8:45 am]

**BILLING CODE P**

#### DEPARTMENT OF JUSTICE

#### Drug Enforcement Administration

#### 21 CFR Part 1310

[Docket No. DEA-1189]

#### Propionyl Chloride

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Drug Enforcement Administration finds that propionyl chloride is used in the illicit manufacture of the controlled substance fentanyl, as well as fentanyl analogues, and fentanyl-related substances and is important to the manufacture of these substances because it is often used in synthetic pathways to illicitly

manufacture fentanyl, fentanyl analogues, and fentanyl-related substances. Prior to proposing to list propionyl chloride as a list I chemical, DEA is soliciting information on the current uses of propionyl chloride (other than for the synthesis of fentanyl) in order to properly determine the effect such a proposed action would have on legitimate industry.

**DATES:** Comments must be submitted electronically or postmarked on or before November 13, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. DEA-1189" on all electronic and written correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration (DEA) encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

#### SUPPLEMENTARY INFORMATION:

#### Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is