

Rules and Regulations

Federal Register

Vol. 66, No. 156

Monday, August 13, 2001

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 924

[Docket No. FV01-924-1 IFR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, OR; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) for the 2001-2002 and subsequent fiscal periods from \$1.50 to \$1.00 per ton of fresh prunes handled. The Committee locally administers the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: August 14, 2001. Comments received by October 12, 2001 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; Fax (202) 720-8938; or E-mail: moab.docketclerk@usda.gov.

Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

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 Order No. 924, as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Department of Agriculture (Department) 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, Washington-Oregon fresh 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 fresh prunes beginning April 1, 2001, 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 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. Such 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 decreases the assessment rate established for the Committee for the 2001-2002 and subsequent fiscal periods from \$1.50 to \$1.00 per ton of fresh prunes handled.

The Washington-Oregon fresh prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington-Oregon fresh prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999-2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 5, 2001, and unanimously recommended 2001-2002 expenditures of \$7,804 and an assessment rate of \$1.00 per ton of fresh

prunes handled. In comparison, last year's budgeted expenditures were \$7,803. The assessment rate of \$1.00 is \$0.50 lower than the rate currently in effect. At the rate of \$1.50 per ton and an estimated 2001–2002 fresh prune production of 4,850 tons, the projected reserve on March 31, 2002, would exceed the maximum level authorized by the order (approximately one fiscal period's operational expenses). The reserve currently is \$9,047.

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$3,461 for salaries, \$1,000 for travel, \$528 for rent and maintenance, and \$475 for its annual audit. Budgeted expenses for these items in 2000–2001 were \$3,360, \$1,000, \$528, and \$475, respectively.

The assessment rate recommended by the Committee was derived for the purpose of reducing the operating reserve to a level consistent with the order. As mentioned earlier, fresh prune shipments for the year are estimated at 4,850 tons which should provide \$4,850 in assessment income. This income, along with approximately \$2,954 from the Committee's authorized reserve, will be adequate to cover the Committee's budgeted expenses of \$7,804. With the decreased assessment rate, the current reserve of \$9,047 would be reduced by as much as \$2,945, thus leaving a balance of about \$6,102 at the end of the 2001–2002 fiscal period. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's operational expenses (§ 924.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 fiscal period 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–2002 budget and those for subsequent fiscal periods will

be reviewed and, as appropriate, approved by the Department.

Initial 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, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 producers of fresh prunes in the production area and approximately 12 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on Committee records, all of the Washington-Oregon fresh prune handlers ship under \$5,000,000 worth of fresh prunes. In addition, based on production and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington-Oregon fresh prune producers, the average annual producer revenue is approximately \$18,000, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2001–2002 and subsequent fiscal periods from \$1.50 to \$1.00 per ton of fresh prunes handled. The Committee unanimously recommended 2001–2002 expenditures of \$7,804 and an assessment rate of \$1.00 per ton of fresh prunes handled. The assessment rate of \$1.00 is \$0.50 lower than the rate currently in effect. The quantity of assessable fresh prunes for the 2001–2002 fiscal period is estimated at 4,850 tons. Thus, the \$1.00 rate should provide \$4,850 in assessment income which along with funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$3,461 for salaries, \$1,000 for travel, \$528 for rent and maintenance, and \$475 for its annual audit. Budgeted expenses for these items in 2000–2001 were \$3,360, \$1,000, \$528, and \$475, respectively.

At the rate of \$1.50 per ton and an estimated 2001–2002 fresh prune production of 4,850 tons, the projected reserve on March 31, 2002, would exceed the maximum level authorized by the order (approximately one fiscal period's operational expenses). As of March 31, 2001, the Committee's reserve was \$9,047. With assessment income of \$4,850 and expenditures of \$7,804, the Committee may draw up to \$2,945 from its reserve, thus leaving the reserve at approximately \$6,093 on March 31, 2002.

The Committee considered alternative levels of assessment but determined that decreasing the assessment rate to \$1.00 per ton would be adequate to reduce the reserve to a level lower than approximately one fiscal period's expenses. The Committee decided that an assessment rate of more than \$1.00 per ton, but less than \$1.50 per ton, would not decrease the reserve to an adequate level. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2001–2002 marketing season could range between \$160 and \$275 per ton of fresh prunes handled. Therefore, the estimated assessment revenue for the 2001–2002 fiscal period as a percentage of total grower revenue should range between 0.36 and 0.63 percent.

This action decreases 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 Washington-Oregon fresh 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 5, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington-Oregon fresh 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.

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 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2001–2002 fiscal period began on April 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable fresh prunes handled during such fiscal period; (2) the action decreases the assessment rate for all assessable fresh prunes beginning with the 2001–2002 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 924

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

For the reasons set forth in the preamble, 7 CFR part 924 is amended as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On and after April 1, 2001, an assessment rate of \$1.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: August 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–20187 Filed 8–10–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs.

25 CFR Part 151

Acquisition of Title to Land in Trust; Delay of Effective Date

AGENCY: Bureau of Indian Affairs.

ACTION: Delay of effective date of final rule.

SUMMARY: This action temporarily delays for 90 days the effective date of the rule titled “Acquisition of Title to Land in Trust,” that we published in the **Federal Register** on January 16, 2001. We have extended the effective date of this rule by similar action on April 16, 2001.

DATES: The effective date of the Acquisition to Title to Land in Trust rule, amending 25 CFR Part 151, published in the **Federal Register** on January 16, 2001 (66 FR 3452), delayed by a rule published February 5, 2001 (66 FR 8899), corrected by rules published February 20, 2001 (66 FR 10815) and June 13, 2001 (66 FR 31976), delayed by a rule published April 16, 2001 (66 FR 19403), is further delayed from August 13, 2001, to November 10, 2001.

ADDRESSES: Submit any correspondence of concern or clarification regarding the delay of the effective date of this rule to: Terry Virden, Director, Office of Trust Responsibilities, MS 4513 MIB, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, MS 4513 MIB, 1849 C Street, NW, Washington, DC 20240; telephone 202/208–5831.

SUPPLEMENTARY INFORMATION: This action temporarily delays for 90 days the effective date of the rule entitled “Acquisition of Title to Land in Trust,” published in the **Federal Register** on January 16, 2001, at 66 FR 3452, and which has had a prior extension of effective date published in the **Federal Register** on April 16, 2001. This document now extends the effective date of the final rule from August 13, 2001, to November 10, 2001, in order to continue to review comments that were received from the prior extension. The rule and received comments are being evaluated at this time to determine whether to amend the final rule in whole or in part. Given the imminence of the effective date of the final rule, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

The Department is publishing a Notice of Proposed Withdrawal in this issue of the **Federal Register** that will seek comments on whether this rule should be withdrawn and a new proposed rule promulgated which better addresses the public’s continued concern with the procedures set out in 25 CFR Part 151.

Dated: August 8, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–20253 Filed 8–10–01; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4137a; FRL–7033–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Two Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania’s State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic