

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, as previously stated, California kiwifruit must meet the "tight-fill" requirements, as specified in the standards (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the March 12, 2003, meeting, was a public meeting and all entities, both large and small, were able to express their views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses, as requested in the proposed rule.

A proposed rule concerning this action was published in the **Federal Register** on July 28, 2004 (69 FR 44975). Copies of the rule were provided to all committee members and kiwifruit handlers. The rule was also made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period, which ended on August 12, 2004, was provided to allow interested persons to respond to the proposal. No comments were received; and, thus, 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 matters presented, including the information and recommendation of 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because shipments of 2004 crop kiwifruit are expected to begin in early September and these changes should be effective by that time. Moreover, prompt implementation will provide handlers time to plan accordingly.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

- For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWI FRUIT GROWN IN CALIFORNIA

- 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.302 [Amended]

- 2. In § 920.302, paragraphs (a)(4)(iii), (a)(4)(iv), and (b) are revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

- (a) * * *
- (4) * * *

(iii) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used:

SIZE DESIGNATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8 pound sample
18	25
20	27
23	30
25	32
27/28	35
30	39
33	43
36	46
39	49
42	53
45	55

(iv) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be "not badly misshapen," and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen," and except that all varieties of kiwifruit are exempt from the "tightly packed" standard as defined in § 51.2338(a) of the U.S.

Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

- 3. In § 920.303, paragraph (c)(1) is revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(c) * * *

(1) The quantity shall be indicated in terms of count and size for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

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Dated: September 2, 2004.

A.J. Yates,
Administrator, Agricultural Marketing Service.

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BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV04-924-1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) for the 2004–2005 and subsequent fiscal periods from \$1.50 to \$1.75 per ton of prunes handled. The Committee locally administers the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess 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 will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, 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 J. Kelhart, Technical Advisor, 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.

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 SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 924 (7 CFR 924), regulating the handling of fresh prunes grown in designated counties in Washington and in 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 (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, Washington-Oregon 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 prunes beginning April 1, 2004, 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 increases the assessment rate established for the Committee for the 2004-2005 and subsequent fiscal periods from \$1.50 to \$1.75 per ton of prunes handled.

The 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 and handlers in designated counties in Washington and in Umatilla County, Oregon. 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 was formulated and discussed at a public meeting, thus all directly affected persons had an opportunity to participate and provide input.

For the 2003-2004 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$1.50 per ton of fresh prunes handled. This assessment rate continues in effect from fiscal period to fiscal period 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 May 25, 2004, and unanimously recommended 2004-2005 expenditures of \$7,454 and an increased assessment rate of \$1.75 per ton of prunes. In comparison, last year's budgeted expenditures were \$7,411. The assessment rate of \$1.75 is \$0.25 higher than the rate currently in effect. The Committee recommended the higher assessment rate to cover budgeted expenses and to maintain its monetary reserve at a satisfactory level.

The major expenditures recommended by the Committee for the 2004-2005 fiscal period include \$3,928 for employee salaries, \$576 for rent and maintenance, \$500 for Committee travel, and \$475 for the annual financial audit. These budgeted expenses are the same as those approved for the 2003-2004 fiscal period.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington-Oregon prunes. Applying the \$1.75 per ton assessment rate to the Committee's 4,500 ton crop estimate should provide \$7,875 in assessment income. Thus, income derived from handler assessments should be adequate to cover the recommended \$7,454 budget for

2004-2005. Funds in the reserve (\$4,900 as of March 31, 2004), will be kept within the maximum permitted by the order of 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 USDA upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate will be in effect 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the 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 2004-2005 budget and those for subsequent fiscal periods 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 215 producers of fresh prunes in the regulated production area and approximately 10 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on the total number of producers (215), the most recent three-

year average fresh prune production of 4,359 tons (from Committee records), and the most recent three-year average producer price of \$303 per ton as reported by the National Agricultural Statistics Service, the average annual revenue from the sale of fresh prunes is approximately \$6,143 per producer. In addition, based on Committee records and 2003 f.o.b. prices ranging from \$8.50 to \$9.50 per 30-pound container as reported by the AMS Market News Service, the entire Washington-Oregon fresh prune industry handles less than \$5,000,000 worth of prunes. In view of the foregoing, the majority of Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2004–2005 and subsequent fiscal periods from \$1.50 to \$1.75 per ton for prunes. The Committee unanimously recommended 2004–2005 expenditures of \$7,454 and the \$1.75 per ton assessment rate. The assessment rate of \$1.75 is \$0.25 higher than the 2003–2004 rate. With an estimated 2004–2005 prune crop of 4,500 tons, the \$1.75 rate should provide the Committee with \$7,875 in assessment income and be adequate to cover budgeted expenses. The Committee recommended the higher assessment rate to help ensure that budgeted expenses are covered and that its monetary reserve will not have to be used. Funds in the reserve (\$4,900 as of March 31, 2004), will be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

The major expenditures recommended by the Committee for the 2004–2005 fiscal period include \$3,928 for employee salaries, \$576 for rent and maintenance, \$500 for Committee travel, and \$475 for the annual financial audit. These budgeted expenses are the same as those approved for the 2003–2004 fiscal period.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not have generated the income necessary to administer the program with an adequate reserve.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2004–2005 season could range from about \$273 per ton to about \$351 per ton. Therefore, the estimated assessment revenue for the 2004–2005 fiscal period as a percentage

of total producer revenue could range between 0.50 and 0.64 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Washington-Oregon fresh prune industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 25, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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.

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

A proposed rule concerning this action was published in the **Federal Register** on July 19, 2004 (69 FR 42899). Copies of the proposed rule were also mailed or sent via facsimile to Committee members. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending August 3, 2004, was provided for interested persons to respond to the proposal. 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.ama.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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving

2004 crop fresh prunes from growers. The 2004–2005 fiscal period began on April 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington-Oregon fresh prunes handled during such fiscal period. The Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis. Further, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 924

Plums, Prunes, Marketing agreements, 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 IN 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 or after April 1, 2004, an assessment rate of \$1.75 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: September 1, 2004.

A.J. Yates,
Administrator, Agricultural Marketing Service.

[FR Doc. 04-20273 Filed 9-7-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-345-AD; Amendment 39-13789; AD 2004-18-11]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F Airplanes; and Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.