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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 924

[Docket No. AMS-FV-07-0087; FV07-924-1 IFR]

#### Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, Oregon; 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 2007-2008 and subsequent fiscal periods from \$1.75 to \$1.00 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. Assessments upon fresh prune handlers are used by the Committee to fund reasonable and necessary expenses of 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.

**DATES:** Effective July 16, 2007. Comments received by September 11, 2007, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.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.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Curry or Gary D. Olson, 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 E-mail:

[Robert.Curry@usda.gov](mailto:Robert.Curry@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 924 (7 CFR part 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, 2007, 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 decreases the assessment rate established for the Committee for the 2007-2008 and subsequent fiscal periods from \$1.75 to \$1.00 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 2004-2005 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$1.75 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 29, 2007, and unanimously recommended 2007-2008 expenditures of \$9,043 and a decreased assessment rate of \$1.00 per ton. In comparison, last year's budgeted expenditures were \$5,600. The assessment rate of \$1.00 is \$0.75 lower than the rate in effect since the 2004-

2005 fiscal period. The Committee recommended the assessment rate change for the purpose of lowering its monetary reserve to a level commensurate with the maximum permitted by the order of approximately one fiscal period's operational expenses (7 CFR 924.42).

The major expenditures recommended by the Committee for the 2007–2008 fiscal period include \$4,800 for the management fee, \$1,000 for Committee travel expenses, \$3,000 for the annual financial audit, and \$100 for compliance. In comparison, budgeted expenses for the 2006–2007 season were \$4,200, \$800, \$500, and \$100, respectively. In addition, the Committee also budgeted an additional \$343 this fiscal period to cover the cost of insurance, bonds, equipment maintenance, and other possible miscellaneous expenses.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington-Oregon prunes. Applying the \$1.00 per ton assessment rate to the Committee's 4,400 ton crop estimate should provide \$4,400 in assessment income. This assessment income in addition to approximately \$4,643 from the Committee's reserve would be adequate to cover the recommended \$9,043 budget for the 2007–2008 fiscal period. As of March 31, 2007, there was \$8,815 in the Committee's reserve. The assessment rate established with 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 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would 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 2007–2008 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

### 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, 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.

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 \$6,500,000.

Based on information compiled by both the Committee and the National Agricultural Statistics Service, the average annual revenue from the sale of fresh prunes was approximately \$8,440 per producer in 2006. This estimate is based on 215 producers with a total utilized production of 5,200 tons selling for an average of \$349 per ton. In addition, based on Committee records and 2006 f.o.b. prices ranging from \$14.00 to \$16.50 per 30-pound container as reported by AMS Market News Service, the entire Washington-Oregon fresh prune industry handled less than \$6,500,000 worth of prunes last season. In view of the foregoing, 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 2007–2008 and subsequent fiscal periods from \$1.75 to \$1.00 per ton. The Committee unanimously recommended 2007–2008 expenditures of \$9,043 and the \$1.00 per ton assessment rate at the May 29, 2007 meeting. The assessment rate of \$1.00 is \$0.75 lower than the rate in effect since the 2004–2005 fiscal period. With an estimated 2007–2008 prune crop of 4,400 tons, income from the \$1.00 assessment combined with funds from the Committee's monetary reserve should be adequate to cover budgeted expenses. The Committee recommended

the lower assessment rate to help decrease the monetary reserve. Funds in the reserve (\$8,815 as of March 31, 2007) 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 2007–2008 fiscal period include \$4,800 for the management fee, \$1,000 for Committee travel expenses, \$3,000 for the annual financial audit, and \$100 for compliance.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Higher assessment rates were considered, but not recommended because of the potential of generating too much income and thus maintaining the reserve fund at an amount higher than program requirements allow.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2007–2008 season could average about \$325 per ton. Therefore, the estimated assessment revenue for the 2007–2008 fiscal period as a percentage of total producer revenue could approximate 0.31 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 and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 29, 2007 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. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

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 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 2007–2008 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; (2) this action decreases the assessment rate for assessable prunes beginning with the 2007–2008 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

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, 2007, an assessment rate of \$1.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–13583 Filed 7–12–07; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 928**

**Docket No. AMS–FV–07–0024; FV02–928–3 FRJ**

#### **Papayas Grown in Hawaii; Termination of Marketing Order 928 and Implementing Rules and Regulations**

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

**ACTION:** Final rule, termination order.

**SUMMARY:** This final rule terminates the Federal marketing order (order) for papayas grown in Hawaii, and the rules and regulations established under the order. The Department of Agriculture (USDA) previously determined the order should be terminated due to the results of a referendum in which growers indicated a lack of support for the continuation of the order. However, USDA postponed the termination until licensing agreements regarding development and use of transgenic papaya varieties could be resolved. Sufficient time has elapsed for the industry to resolve any outstanding licensing issues. Therefore, USDA is proceeding with the termination of the order.

**DATES:** Effective Date: July 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marc McPetridge, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–1509, Fax (202) 720–8938; or [Marc.McPetridge@usda.gov](mailto:Marc.McPetridge@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action is being taken pursuant to § 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” and § 928.64 of the order.

USDA is issuing this rule in conformance with Executive Order 12866.

This final 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 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. A 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 terminates the marketing order for papayas grown in Hawaii and the rules and regulations issued thereunder. The order provides the authority to regulate the handling of papayas grown in Hawaii and was administered locally by the Papaya Administrative Committee (PAC).

The order has been in effect since 1971. The order authorizes the establishment of grade, size, quality, pack, and container requirements. The order also authorizes production and marketing research, market development, and paid advertising for Hawaii papayas. The program was funded by assessments imposed on papaya handlers.

Section 928.64(e) of the order specifies that continuance referenda must be conducted among papaya producers every sixth year before October 1. In accordance with this section, USDA conducted a referendum among papaya growers during the