

Dated: September 21, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-23152 Filed 9-24-09; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 924

[Doc. No. AMS-FV-09-0040; FV09-924-1 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 2009-10 and subsequent fiscal periods from \$1.00 to \$2.00 per ton for fresh prunes. The Committee is responsible for local administration of the marketing order regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Assessments upon handlers of fresh prunes are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** *Effective Date:* September 26, 2009.

**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@ams.usda.gov* or *GaryD.Olson@ams.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@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This final 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 final 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 will be applicable to all assessable Washington-Oregon prunes beginning April 1, 2009, and continue until amended, suspended, or terminated.

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 final rule increases the assessment rate established by the Committee for the 2009-10 and subsequent fiscal periods from \$1.00 to \$2.00 per ton for Washington-Oregon prunes handled under the order.

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 of prunes 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 is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007-08 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of \$1.00 per ton of prunes handled. This 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 June 2, 2009, and unanimously recommended 2009-10 expenditures of \$8,893. The major expenditures recommended by the Committee for the 2009-10 fiscal period include \$4,800 for the management fee, \$800 for Committee travel, \$100 for compliance, \$2,000 for the financial audit, and \$1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, the \$6,893 budget approved for the 2008-09 fiscal period included \$4,800 for the management fee, \$800 for travel expenses, \$100 for compliance, and \$1,150 for audits, equipment maintenance, insurance, bonds, and miscellaneous expenses. The major increase in expenses this year is in the audit category.

The assessment rate recommended by the Committee was derived by dividing the anticipated expenses of \$8,893 by the projected 2009 4,400-ton prune production. Applying the \$2.00 per ton assessment rate to this crop estimate should provide \$8,800 in assessment income, which, in addition to a small draw of approximately \$93.00 from the Committee's monetary reserve, should adequately cover the budgeted expenditures. The reserve balance at the end of the 2008-09 fiscal period was \$5,160. The estimated 2009-10 year-end reserve is \$5,067, which is within the order's limit of approximately one fiscal period's operational expenses. The Committee recommended the higher assessment rate in order that the budgeted expenditures—\$2,000 higher than the 2008-09 approved budget—are adequately covered and that the current reserve balance is maintained.

The increased assessment rate 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 this assessment rate will be 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 the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee's 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 2009–10 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) (5 U.S.C. 601–612), 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.

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 \$7,000,000.

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 \$7,930 per producer in 2008. This estimate is based on 215 producers with a total production of about 3,514 tons of fresh prunes selling for an average of \$485 per ton. In addition, based on AMS Market News Service reports that 2008 f.o.b. prices ranged from \$17.00 to \$19.00 per 30-pound container, the entire

Washington-Oregon fresh prune industry handled less than \$7,000,000 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 final rule increases the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent fiscal periods from \$1.00 to \$2.00 per ton for prunes handled under the order's authority. The Committee also unanimously recommended 2009–10 expenditures of \$8,893, which is \$2,000 higher than the \$6,893 budget approved for the 2008–09 fiscal period. When the recommended \$2.00 per ton assessment rate is levied against the 2009–10 prune crop estimate of 4,400 tons, the Committee expects assessment income of about \$8,800. The Committee recommended the higher assessment rate to help ensure that the 2009–10 budgeted expenses are adequately covered and that the current reserve balance is maintained. With the 4,400 ton crop estimate this year, the Committee would have realized income of about \$4,400 without the assessment rate increase. This would have forced the Committee to draw approximately \$4,493 from its \$5,160 reserve fund, leaving an inadequate amount in reserve.

The major expenditures recommended by the Committee for the 2009–10 fiscal period include \$4,800 for the management fee, \$800 for Committee travel, \$100 for compliance, \$2,000 for the financial audit, and \$1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, the \$6,893 budget approved for the 2008–09 fiscal period included \$4,800 for the management fee, \$800 for travel expenses, \$100 for compliance, and \$1,193 for audits, equipment maintenance, insurance, bonds, and miscellaneous expenses. The major increase in expenses this year is in the audit category.

The Committee discussed alternatives to this recommended assessment increase. Leaving the assessment rate at the current \$1.00 per ton was discussed, but not considered since such a rate would not have generated income adequate to maintain the Committee's reserve at or about the current level.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2009–10 season could average about \$500 per ton for fresh Washington and Oregon grown prunes. Therefore, the estimated

assessment revenue for the 2009–10 fiscal period as a percentage of total producer revenue is 0.4 percent for Washington-Oregon prunes.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order.

In addition, the Committee's meeting was widely publicized throughout the Washington prune industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the June 2, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on the issues.

A proposed rule concerning this action was published in the **Federal Register** on July 24, 2009 (74 FR 36616). Copies of the rule were made available by the Committee office. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period, ending August 24, 2009, was provided to allow interested persons to respond to the proposal. No comments were received.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large Washington-Oregon 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. As noted in the initial regulatory flexibility analysis, 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 order may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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.

Pursuant to 5 U.S.C. 553, it 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 shipping prunes from the 2009–10 crop and the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Finally, a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 924**

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—PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON**

■ 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, 2009, an assessment rate of \$2.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: September 21, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–23153 Filed 9–24–09; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF ENERGY**

**10 CFR Parts 600 and 1024**

**RIN 1991–AB77**

**Assistance Regulations; Correction**

**AGENCY:** Department of Energy.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Energy (DOE) is correcting a final rule that

appeared in the **Federal Register** of August 28, 2009 (74 FR 44273). In this document, DOE amended its Financial Assistance Regulations to update, streamline, and simplify the general rules, and also removed regulations governing the DOE Financial Assistance Appeals Board.

**DATES:** This correction is effective September 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jacqueline Kniskern, Office of Procurement and Assistance Policy, U.S. Department of Energy, at 202–287–1342, or by e-mail at *jacqueline.kniskern@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** In FR Doc. E9–20299, appearing on page 44273 in the **Federal Register** of Friday, August 28, 2009, the following correction is made:

**§ 600.6 [Corrected]**

On page 44275, third column, § 600.6, introductory paragraph (c), the phrase “DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:” is corrected to read “DOE may award a grant or cooperative agreement or technology investment agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:”.

Issued in Washington, DC, on September 21, 2009.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.*

**Joe Waddell,**

*Acting Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

[FR Doc. E9–23188 Filed 9–24–09; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA–2008–0986; Airspace Docket No. 08–ASO–15]

**Modification of Class E Airspace; Franklin, NC**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This action confirms the effective date of an airspace action, which was previously published as a

direct final rule in the **Federal Register**, for the Macon County Airport in Franklin, NC.

**DATES:** *Effective Date:* 0901 UTC, September 25, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**SUPPLEMENTARY INFORMATION:**

**Confirmation of Effective Date**

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 17, 2008 (73 FR 76519), Docket No. FAA–2008–0986; Airspace Docket No. 08–ASO–15. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 12, 2009. No adverse comments were received, and thus this notice confirms that effective date.

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Issued in College Park, Georgia, on September 2, 2009.

**Barry A. Knight,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. E9–22075 Filed 9–24–09; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket FAA No. FAA–2008–0006; Airspace Docket No. 08–ANM–1]

**Establishment of Class D Airspace and Amendment of Class E Airspace; North Bend, OR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published in the **Federal Register** on August 26, 2009. In that rule, errors were made in the legal description and the airport name for North Bend, OR. This action corrects those errors.

**DATES:** *Effective Date:* 0901 UTC, October 22, 2009. The Director of the