

more widespread throughout California and there were many more growers involved in kiwifruit production. The order originally provided for eight grower districts within the production area, with one membership seat apportioned to each district, and an additional seat reallocated annually to each of the three districts with the highest production in the preceding year. The structure was designed to afford equitable representation for all districts on the committee.

Planted acreage has been gradually concentrated into two main regions in recent years. That, and the decline in the number of growers over time, prompted consolidation of the districts and reallocation of grower member seats through the formal rulemaking process. Under the amended order, the production area will be divided into three grower districts, and committee membership will be allocated proportionately among the districts based upon the previous five years' average production for each district. These changes are expected to better reflect the current composition of the industry.

This rule removes § 920.131 from the order's administrative rules and regulations, effective August 1, 2010. The section specifies the boundaries for eight grower districts. As such, it will be inconsistent with the amended § 920.12, which provides the boundaries for three grower districts.

The changes in this interim rule are necessary to conform with amendments to the order, which will become effective on August 1, 2010. No alternatives to this action are deemed appropriate.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the change. The revision in this interim rule provides consistency between the amended marketing order and its administrative rules and regulations. The order amendment is expected to ensure that the interests of all large and small entities are represented appropriately during committee deliberations.

Committee meetings in which regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

At committee meetings held on January 30, 2008, April 22, 2008, and July 9, 2008, the committee voted unanimously to recommend amending

the order by revising the grower districts into which the production area is divided. The committee's recommendations were submitted to AMS on August 15, 2008. Growers approved the amendment to redefine district boundaries in a referendum held in March 2010. The amendment will become effective August 1, 2010.

This rule will not impose any additional reporting or recordkeeping requirements on large or small kiwifruit 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.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the administrative rules and regulations currently prescribed under the marketing order for California kiwifruit. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendations and other information, it is found that this interim 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 effectuating this rule on August 1, 2010, because: (1) August 1, 2010 is the beginning of the fiscal period and amendments to the order's district boundary provision will become effective on that date; (2) this action is

necessary to make the order's administrative rules and regulations consistent with the amended order; and (3) this rule provides a 60-day comment period, and any written comments received will be considered prior to any finalization of this rule.

#### **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—KIWIFRUIT GROWN IN CALIFORNIA**

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

**Authority:** 7 U.S.C. 601–674.

#### **§ 920.131 [Removed]**

■ 2. Section 920.131 is removed.

Dated: July 20, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-18087 Filed 7-22-10; 8:45 am]

**BILLING CODE 3410-02-P**

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#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 924**

[Doc. No. AMS-FV-10-0054; FV10-924-2 IR]

#### **Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Suspension of Reporting and Assessment Requirements**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule suspends the reporting and assessment requirements prescribed under the Washington-Oregon fresh prune marketing order. The marketing order regulates the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, and is administered locally by the Washington-Oregon Fresh Prune Marketing Committee (Committee). On June 1, 2010, the Committee unanimously voted to terminate Marketing Order No. 924. Since the only regulatory actions currently in effect are the reporting and assessment requirements, the Committee included a recommendation

to immediately suspend these activities while USDA processes the termination request. The reporting and assessment requirements will remain suspended until reinstated or permanently terminated.

**DATES:** Effective July 24, 2010, 7 CFR 924.160 and 924.236 are suspended indefinitely; comments received by September 21, 2010 will be considered prior to confirmation as 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>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. 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:**

Robert Curry or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail:

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

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.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 fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 2009-2010 fiscal period, an assessment rate of \$2.00 per ton of fresh prunes handled was approved by USDA, to continue in effect indefinitely unless modified, suspended, or terminated. This action suspends the reporting requirements and the assessment rate for the 2010-2011 fiscal period, which began April 1, 2010, both remaining suspended until reinstated or permanently 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. 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.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Washington-Oregon fresh prune order's regulatory requirements, which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

This rule suspends § 924.236, which established an assessment rate of \$2.00 per ton on or after April 1, 2009, and § 924.160, which implements assessment reporting requirements. On June 1, 2010, the Committee unanimously voted in favor of requesting that USDA terminate the order, and included a recommendation

that the reporting and assessment requirements—the only regulatory activities still in effect at this time—be suspended while termination of the order is being processed by USDA under a separate regulatory action.

Section 924.41 of the order provides authority for the Committee to assess handlers for their pro rata share of the expenses authorized each fiscal period. Section 924.60 of the order authorizes the Committee to collect reports and other information as necessary for the Committee to perform its duties under the order. Section 924.236 implements the continuing assessment rate, while § 924.160 implements the requirement that handlers report specified information to the Committee prior to October 30 of each year. This report is used as a basis for the Committee's collection of assessments from handlers.

Marketing Order No. 924 has been in effect since 1960 and has provided the fresh prune industry in Washington and Oregon with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for inspection requirements. The order also authorizes production research and marketing research and development projects, as well as the necessary reporting and recordkeeping functions required for operation. Based on the Committee's recommendation, USDA suspended the order's handling regulations in May 2006. These handling regulations required that certain varieties of fresh prunes be inspected to ensure that they met minimum grade standards. The Committee believed that the costs of inspection outweighed the benefits provided from having the regulatory requirements in effect.

Following the regulatory suspension, the Committee continued to collect assessments in order to maintain its functionality. The Committee felt that it should continue to fund its full operational capability in order to gauge the merits of the handling regulation suspension. Therefore, when it recommended suspension of the handling regulations, the Committee also recommended the establishment of reporting requirements for the purpose of tracking shipments and collecting assessments. Prior to the handling regulation suspension, the Committee relied on the Federal-State Inspection Service to provide it with copies of the certificates that accompany each lot of inspected fresh prunes. The inspection certificates contained information necessary for the Committee to collect assessments from each of the regulated handlers. On May 10, 2006, a new section 924.160 and Committee form

"Handler Statement for Washington-Oregon Fresh Prunes" were implemented pursuant to publication in the **Federal Register** (71 FR 26817). The Committee used this form to collect fresh prune shipment information and to monitor market and crop conditions, thus helping it to make a determination regarding the impact of non-regulation on the industry.

The Washington-Oregon fresh prune industry has been in decline for many years, with acreage and production trending downward. This contributed to the suspension of the handling regulations in 2006. Since the handling regulations were suspended, the Committee has taken the opportunity to evaluate the suspension's effect on the marketing of fresh prunes over the past four years. Based on its analysis, the Committee has determined that the regulatory suspension has not negatively impacted the marketing of fresh prunes. Thus, the Committee determined that there is no longer a need for the order, and recommended its termination at a meeting held in Prosser, Washington, on June 1, 2010.

In addition, the Committee determined that there is no need to continue collecting assessments and requiring reports for the sole purpose of maintaining its functionality, thus recommended that the assessment rate and reporting requirements be immediately suspended. This action will relieve the industry of the assessment and reporting burden during the pendency of the termination process.

The Committee recommended a budget of \$6,085 for the remainder of the period leading to order termination. The budgeted amount was established on the basis of the amount remaining in the Committee's monetary reserve. The budget in its entirety will provide for such operating expenses as are necessary during the termination process.

#### Initial 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 action 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 six handlers of Washington-Oregon fresh prunes subject to regulation under the order and approximately 56 fresh prune producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on information compiled by both the Committee and the National Agricultural Statistics Service, the average producer price for fresh prunes was approximately \$385 per ton. With 4,260 tons of fresh prunes shipped from the Washington and Oregon production areas in 2009, this equates to average producer revenue of about \$30,000. In addition, AMS Market News Service reported that 2009 f.o.b. prices ranged from \$12.00 to \$18.00 per 30-pound container, thus 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 rule suspends the reporting requirements regarding the collection of information pertaining to shipments and assessments under the order. It also suspends the assessment rate of \$2.00 per ton established for the period beginning April 1, 2009, and continuing until modified, suspended, or terminated by USDA. The Committee recommended a budget of expenditures of \$6,085 for the period beginning on April 1, 2010, and ending with termination of the order. This budget is based on the Committee's monetary reserve balance on April 1, 2010. Major expenses for the budget period beginning on April 1, 2010, are for Committee travel, the financial review, and management compensation.

The Committee made the recommendation to suspend the reporting and assessment requirements as an adjunct to the recommendation to terminate the order. As such, the only other alternative would have been to continue to assess handlers and to require reports, options not considered practicable since additional funds are not required.

This action suspends the reporting and assessment obligations imposed on handlers. During any period when effective, assessments are applied uniformly on all handlers and some of the costs may be passed on to

producers. This suspension of the reporting and assessment requirements reduces the burden on handlers and should also reduce the burden on producers.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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. In addition, 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.

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. Like all Committee meetings, the June 1, 2010, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Additionally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the suspension of the reporting and assessment requirements prescribed under the Washington-Oregon fresh prune marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 Committee has recommended prompt termination of the marketing order regulating the handling of Washington-Oregon fresh prunes and no longer requires reports or assessment income; (2) this action is a relaxation in the order's regulatory requirements; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this 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—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.

#### §§ 924.160 and 924.236 [Suspended]

■ 2. Sections 924.160 and 924.236 are suspended in their entirety.

Dated: July 20, 2010.

**Rayne Pegg,**  
Administrator, Agricultural Marketing Service.

[FR Doc. 2010–18086 Filed 7–22–10; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 946

[Doc. No. AMS–FV–10–0052; FV10–946–1 IR]

#### Irish Potatoes Grown in Washington; Temporary Change to the Handling Regulations and Reporting Requirements

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule suspends, for the 2010–2011 season only, the minimum quality, maturity, pack, marking, and inspection requirements currently

prescribed for russet potato varieties under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). During the suspension of the russet potato handling regulation, reports from handlers will be required for the purpose of obtaining information necessary to administer the marketing order. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while allowing the industry the opportunity to explore alternative marketing strategies.

**DATES:** Effective July 24, 2010; comments received by September 21, 2010 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by September 21, 2010.

**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>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. 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:

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: [Teresa.Hutchinson@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, 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. This rule is not intended to have retroactive effect.

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 suspends the order's handling regulation for russet potato varieties for the 2010–2011 season. This rule allows the Washington potato industry to market russet potatoes without regard to the minimum quality, maturity, pack, marking, and inspection requirements currently prescribed under the Washington potato marketing order. It is intended that the suspension will apply to the season beginning on July 1, 2010, and continuing through June 30, 2011. The minimum quality, maturity, pack, marking, and inspection requirements will resume July 1, 2011, for the 2011–2012 season and continue unless modified, suspended, or terminated.

This rule also establishes a new reporting requirement for russet potatoes handled during the same 12 month period. As assessments will remain in effect on all fresh russet potatoes handled under the order, reporting requirements will allow the Committee to obtain information necessary to facilitate assessment collection.