

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV04-924-1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase 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 would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 3, 2004.

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; E-mail: moab.docketclerk@usda.gov; 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.ams.usda.gov/fv/moab.html>.

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 proposed herein would be applicable to all assessable prunes beginning April 1, 2004, and continue until amended, suspended, or terminated. This rule would 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 would increase 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 would be adequate to cover the recommended \$7,454 budget for 2004–2005. Funds in the reserve (\$4,900 as of March 31, 2004), would be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (\$ 924.42.)

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would be undertaken as necessary. The Committee's 2004–2005 budget and those for subsequent fiscal periods would 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. 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 would increase 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 proposed 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, which would 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 would not have to be used. Funds in the reserve (\$4,900 as of March 31, 2004), would 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 generate 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 and 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 would increase 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 would be 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. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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 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.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) 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; (2) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (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.

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 proposed to be 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: July 13, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–16272 Filed 7–16–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 236 and 241

[ICE No. 2317–04]

RIN 1653–AA41

DEPARTMENT OF JUSTICE

8 CFR Parts 1236, 1240 and 1241

[EOIR No. 146P; AG Order No. 2726–2004]

RIN 1125–AA50

Execution of Removal Orders; Countries to Which Aliens May Be Removed

AGENCY: United States Immigration and Customs Enforcement, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Secretary of Homeland Security and the Attorney General publish this joint notice of proposed rulemaking to amend their respective agencies' regulations pertaining to removal of aliens.

The Department of Homeland Security proposes to amend its rules to establish that acceptance by a country is not required under specific provisions of section 241(b) of the Immigration and Nationality Act (Act) in order to remove an alien to that country, and that a "country" for the purpose of removal is not premised on the existence or functionality of a government in that country. This rule clarifies the countries to which an alien may be removed and the situations in which the Secretary of Homeland Security will remove an alien to an alternative or additional country. The Department of Homeland Security proposed rule also makes technical changes as a result of amendments to the Act by the Homeland Security Act of 2002 (HSA).

The Department of Justice proposed rule clarifies the procedure for an alien to designate the country to which he would prefer to be removed, provides that the immigration judge shall inform any alien making such a designation that the alien may be removed to another country under section 241(b) of the Act in the discretion of the Secretary of Homeland Security in effecting the foreign policy of the United States, and clarifies the effect of an identification of a country for removal in an immigration judge's order of removal from the United States. The rule clarifies that acceptance by a country is not a factor

to be considered by the immigration judge in identifying a country or countries of removal in the administrative order of removal. The Department of Justice proposed rule also makes technical changes to eliminate unnecessary provisions and update references to reflect the enactment of the HSA.

DATES: Written comments must be submitted to the appropriate agency on or before August 18, 2004.

ADDRESSES: Please submit written comments pertaining to the Department of Homeland Security proposed rule to Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference ICE No. 2317–04 on your correspondence. Comments may also be submitted electronically to the Department of Homeland Security at rfs.regs@dhs.gov. Comments submitted electronically must include the ICE No. 2317–04 in the subject heading to ensure that the comments can be transmitted electronically to the appropriate program office. Comments are available for public inspection at the above address by calling (202) 514–3048 (not a toll-free call) to arrange for an appointment.

Please submit written comments pertaining to the Department of Justice proposed rule to Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference RIN No. 1125–AA50 on your correspondence. You may view an electronic version of this proposed rule at www.regulations.gov. You may also comment via the Internet to the Executive Office for Immigration Review (EOIR) at eoir.regs@usdoj.gov or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically, you must include RIN No. 1125–AA50 in the subject box.

FOR FURTHER INFORMATION CONTACT: Regarding the Department of Homeland Security proposed rule: Mark Lenox, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 801 I Street, NW., Suite 800, Washington, DC 20536, telephone (202) 616–9166 (not a toll-free call).

Regarding the Department of Justice proposed rule: Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia