

exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) less than the required two-thirds majority of voters, by number or production volume, favored continuance of the nectarine and peach orders in the recent referendum; (3) handlers are aware of USDA's intention to suspend the regulations, which was announced in a press release issued on March 25, 2011; 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

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

- 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### PART 916—NECTARINES GROWN IN CALIFORNIA

- 2. In part 916, §§ 916.110, 916.115, 916.234, 916.235, 916.350, and 916.356 are suspended indefinitely, effective April 19, 2011.

#### PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

- 3. In part 917, § 917.143, paragraph (b), lift the suspensions of March 3, 1994 (59 FR 10056); and suspend §§ 917.143, 917.150, 917.258, 917.259, 917.442, and 917.459 indefinitely, effective April 19, 2011.

Dated: April 12, 2011.

**David R. Shipman,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–9328 Filed 4–15–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 924

[Docket No. AMS–FV–10–0053; FV10–924–1 FR]

#### Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Termination of Marketing Order 924

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

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

**SUMMARY:** This final rule terminates the Federal marketing order regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, and the rules and regulations issued thereunder. The Department of Agriculture (USDA) has determined that the marketing order is no longer an effective marketing tool for the fresh prune industry, and that termination best serves the current needs of the industry while also eliminating the costs associated with the operation of the marketing order.

**DATES:** *Effective Date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721, *telephone:* (559) 487–5110, *Fax:* (559) 487–5906, or *E-mail:* [Martin.Engeler@ams.usda.gov](mailto:Martin.Engeler@ams.usda.gov); or Robert Curry, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW Broadway, Suite 930, Portland, Oregon 97205, *telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail:* [Robert.Curry@ams.usda.gov](mailto:Robert.Curry@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 action is governed by section 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 § 924.64 of Marketing Agreement and Order No. 924, both as amended (7 CFR part 924), effective under the Act and hereinafter referred to as 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.

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 Federal Marketing Order No. 924 and the rules and regulations issued thereunder. The order contains authority for regulation of the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. At a meeting held in Prosser, Washington, on June 1, 2010, the Committee unanimously recommended termination of the order.

Section 924.64 of the order provides, in pertinent part, that USDA terminate or suspend any or all provisions of the order when a finding is made that the order does not tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Additionally, USDA is required to notify Congress not later than 60 days before the date the order would be terminated.

The order, which was effectuated in 1960, 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 mandatory inspection. The order also contained authorization for production research and marketing research and development projects, as well as the necessary reporting, recordkeeping, and assessment functions required for operation.

Based on the Committee's recommendation, USDA suspended the order's handling regulations on May 9, 2006 (71 FR 26817). The suspended

handling regulations (§ 924.319) consist of minimum quality requirements for certain fresh prunes produced within the regulated production area. When the Committee made the recommendation to suspend the handling regulations, the industry believed that the costs of inspection outweighed the benefits of having the regulatory requirements in effect. The Committee decided to evaluate the marketing conditions annually thereafter to determine whether to continue the regulatory suspension, reinstate handling regulations, or take some other action. The only regulatory provisions in effect after the 2006 suspension were those pertaining to collection of assessments for the purpose of maintaining the functionality of the Committee, and a reporting provision that provided a basis for assessment collection.

After four years of operating without the quality regulations in effect, the Committee, on June 1, 2010, determined that the suspension of the regulations had not negatively impacted the marketing of fresh Washington-Oregon prunes. Analysis of the marketing conditions between 2006 and 2010, as well as an analysis of statistics showing that the fresh prune industry has been in steady decline over the past several decades, led the Committee to conclude that the order is no longer an effective marketing tool for the fresh prune industry, and to subsequently recommend termination.

For the purpose of relieving the industry of regulation while the termination request was processed, an interim rule suspending the order's reporting and assessment requirements was published in the **Federal Register** on July 23, 2010 (75 FR 43039).

Evidence supporting the conclusion that the industry has been decreasing in scope and volume include statistics showing that the Washington-Oregon fresh prune industry has fewer producers and handlers today than there were when the order was promulgated, and that acreage and production has significantly declined as well. For example, USDA Marketing Order Administration Branch records from an amendatory referendum indicate that there were approximately 720 producers of fresh prunes in the order's production area in 1974, while the Committee's 2010 records show that there were only 56 active producers. Furthermore, Committee records indicate that there were 51 handlers in 1961—the year after the order was promulgated—as opposed to six handlers operating under the order in 2010. Committee records also indicate that 12,120 tons of fresh prunes were shipped in 1961 as compared to

the 4,260 tons shipped in 2009. Finally, data provided by the USDA National Agricultural Statistics Service (NASS) indicates that prune acreage in Washington and Oregon has declined in the past 50 years by about 80 percent.

#### Final Regulatory Flexibility Analysis

Pursuant to the 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.

During the 2009–2010 marketing year, there were six handlers of Washington-Oregon fresh prunes subject to regulation under the order and approximately 56 fresh prune producers in the regulated production 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 NASS, the average producer price for fresh prunes in 2009 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, indicating that 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 terminates the Federal marketing order for fresh prunes grown in Washington and Oregon, including the rules and regulations issued thereunder. The order contained authority to regulate the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements being terminated by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Termination of the reporting requirements is expected to reduce the total reporting burden on the handlers regulated under the order by about 2.5 hours, and should also further reduce industry expenses.

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.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A proposed rule inviting comments regarding the termination of Marketing Order 924 was published in the **Federal Register** on November 8, 2010 (75 FR 68510). The rule was made available by the Committee to handlers and producers. In addition, the rule was made available through the Internet by the USDA and the Office of the **Federal Register**. The rule provided a 60-day comment period which ended on January 7, 2011. No comments were received.

Based on the foregoing, and pursuant to section 608c(16)(A) of the Act and § 924.64 of the order, it is hereby found that Federal marketing order 924 regulating the handling of fresh prunes produced in designated counties in Washington, and in Umatilla County, Oregon, does not tend to effectuate the declared policy of the Act, and is therefore terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress was so notified on February 2, 2011. USDA hereby appoints Committee Chairman Paul Rush and Committee Secretary-Treasurer Ron Eakin as trustees to conclude and liquidate the affairs of the Committee and to continue in such capacity until discharged.

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: (1) This action relieves restrictions on handlers by terminating the requirements of the fresh prune order; (2) handling regulations under the order have been suspended since 2006; (3) the

Committee unanimously recommended termination, and all handlers and producers in the industry have been notified and provided an opportunity to comment; and (4) no useful purpose would be served by delaying the effective date.

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

Prunes, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 924—[REMOVED]

■ For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674, 7 CFR part 924 is removed.

Dated: April 12, 2011.

**David R. Shipman,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–9318 Filed 4–15–11; 8:45 am]

**BILLING CODE P**

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 925

[Doc. No. AMS–FV–10–0104; FV11–925–1 FR]

#### Grapes Grown in Designated Area of Southeastern California; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2011 and subsequent fiscal periods from \$0.01 to \$0.0125 per 18-pound lug of grapes handled. The Committee locally administers the marketing order, which regulates the handling of grapes grown in a designated area of southeastern California. Assessments upon grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** *Effective Date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–

5901, Fax: (559) 487–5906, or E-mail: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@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 Ave., 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. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, 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, grape handlers in a designated area of southeastern California 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 grapes beginning on January 1, 2011, 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 rule increases the assessment rate established for the Committee for the 2011 and subsequent fiscal periods from \$0.01 to \$0.0125 per 18-pound lug of grapes.

The grape 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 grapes grown in a designated area of southeastern California. 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 in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2009 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue 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 October 21, 2010, and unanimously recommended 2011 expenditures of \$89,616 and an assessment rate of \$0.0125 per 18-pound lug of grapes handled. In comparison, last year’s budgeted expenditures were \$73,666. The assessment rate of \$0.0125 is \$0.0025 higher than the rate currently in effect. The Committee recommended a higher assessment rate to offset the 2011 budget increases in research, general office expenses, management and compliance expenses, as well as a decreased crop estimate. The Committee estimated a decreased 2011 crop of 6,000,000 18-pound lugs of grapes handled, which is about 604,951 18-pound lugs fewer than the 6,604,951 18-pound lugs handled during the 2010 fiscal period. Based on increases in expenses and a decreased crop estimate, the Committee unanimously recommended that the assessment rate of \$0.01 currently in effect be increased by \$0.0025. Income derived from handler assessments, along with funds from the Committee’s authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011 fiscal period include \$10,000 for research, \$15,616 for general office expenses, and \$64,000 for management and compliance expenses. The \$10,000 research project is for a new vine study proposed by the University of California Riverside. In comparison, major expenditures for the 2010 fiscal period included no funds for research, \$13,666 for general office expenses, and