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

[Doc. No. AMS–FV–09–0040; FV09–924–1 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 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 begins 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 24, 2009.

ADDRESSES: Interested persons are invited to submit written comments regarding 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*. 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 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 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 proposed herein would be applicable to all assessable Washington-Oregon prunes beginning April 1, 2009, 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 would increase the assessment rate established for 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 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 this assessment rate would be effective 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 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 would be reviewed and, as appropriate, approved by USDA.

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 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 $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 rule would increase 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 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 would increase 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 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 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. 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 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. Additionally, 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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2009–10 fiscal period began on April 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all assessable prunes handled during such fiscal period; (2) the Washington-Oregon prune harvest and shipping season is expected to begin in early August; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) 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.

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 proposed to be 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: July 20, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–17601 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AD63

National Credit Union Share Insurance Fund Premium and One Percent Deposit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Section 741.4 of NCUA's rules describes the procedures for the capitalization and maintenance of the National Credit Union Share Insurance Fund (NCUSIF). The current rule, however, does not adequately address how credit unions that enter or depart the NCUSIF system in a given calendar year are affected by any NCUSIF premium or deposit replenishment assessments in that same year. Due to the unprecedented level of NCUSIF expenses in 2009, which required the NCUA to announce both such assessments, NCUA is now proposing amendments to § 741.4 to clarify these procedures. The proposal makes other minor changes to 741.4 and conforming changes to § 701.6 relating to the payment of operating fees by Federal credit unions.

DATES: Comments must be received by August 24, 2009.

ADDRESSES: You may submit comments by any of the following methods. (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Insurance Premium and One Percent Deposit'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540; and Paul Peterson, Director, Applications Section, Office of General Counsel, National Credit Union Administration, at the same address and telephone number.

SUPPLEMENTARY INFORMATION:

A. Background

Congress created the National Credit Union Share Insurance Fund (NCUSIF) in 1970 to provide share insurance coverage to all Federal credit unions and to those State chartered credit unions that apply and meet minimum qualification standards. The NCUSIF provides insurance coverage for each of an insured credit union's members, similar to the coverage provided by the Federal Deposit Insurance Corporation's (FDIC's) Deposit Insurance Fund (DIF).

Unlike the DIF, however, the NCUSIF was not capitalized at its inception by tax revenues. From 1971 through 1980, the capital of the NCUSIF was established solely through the annual insurance premium contributions of insured credit unions. During the period from 1971 through the end of calendar year 1980, the capital of the fund (*i.e.,*