

# Proposed Rules

Federal Register

Vol. 68, No. 143

Friday, July 25, 2003

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 Parts 922, 923, and 924

[Docket No. FV03-922-1 PR]

#### Increased Assessment Rates for Specified Marketing Orders

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rates established for the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Committee (Committees) for the 2003-2004, and subsequent fiscal periods. This rule would increase the assessment rates established for the Committees from \$2.50 to \$3.00 per ton for Washington apricots, from \$0.75 to \$1.00 per ton for Washington sweet cherries, and \$1.00 to \$1.50 per ton for Washington-Oregon fresh prunes. The Committees are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for these marketing orders begins April 1 and ends March 31. The assessment rates would remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Comments must be received by August 11, 2003.

**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 E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.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. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "Orders." The orders are 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 orders

now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 2003, 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 rates established for the Committees for the 2003-2004 and subsequent fiscal periods from \$2.50 to \$3.00 per ton for Washington apricots, from \$0.75 to \$1.00 per ton for Washington sweet cherries, and \$1.00 to \$1.50 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, 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 Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public