

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 923

[Docket No. FV03-923-1 PR]

Sweet Cherries Grown in Designated Counties in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on six proposed amendments to Marketing Agreement and Order No. 923, which regulate the handling of sweet cherries grown in designated counties in Washington. Four amendments are proposed by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order: Adding the authority for promotion, including paid advertising, and production research projects; adding the authority to recommend additional rates of assessment for individual varieties of cherries; adding the authority for the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects; and adding a public member and alternate public member to the Committee. Two additional amendments are proposed by the Agricultural Marketing Service: establishing tenure limitations for Committee members; and requiring that continuance referenda be conducted on a periodic basis to ascertain grower support for the order and adding more flexibility in the termination provisions. These proposals are intended to improve the operation and functioning of the Washington sweet cherry marketing order program.

DATES: The hearing will begin at 9 a.m. in Yakima, Washington, on November 18, 2003, and, if necessary, will continue the next day beginning at 9 a.m.

ADDRESSES: The hearing will be held at the W.L. Hansen Building, 105 S. 18th Street, Yakima, Washington 98901.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259-7988, Fax: (435) 259-4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

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. 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 the 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 hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposes the following amendments as summarized below:

1. Amend the order to authorize promotional activities, including paid advertising, and production research projects.
2. Amend the order to authorize the recommendation of additional rates of assessment for individual varieties of cherries.
3. Allow the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects.
4. Add a public member and alternate public member to the Committee.

The Committee works with USDA in administering the order. These proposals have not received the approval of the Department. The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

In addition, USDA proposes adding two provisions that would help assure that the operation of the program conforms to current Department policy. These provisions would establish tenure requirements for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and adding more flexibility in the termination provisions. USDA also proposes to allow such conforming changes to the order that may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii)