

Proposed Rules

Federal Register

Vol. 68, No. 231

Tuesday, December 2, 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 Part 900

[Docket Number FV03-900-1 PR]

Proposed Rule To Exempt Organic Producers and Marketers From Assessments for Market Promotion Activities Under Marketing Order Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt any person producing and marketing solely 100 percent organic products from paying assessments for market promotion, including paid advertising, activities to marketing order programs administered by the Agricultural Marketing Service (AMS). AMS has identified 28 marketing order programs for which assessment exemptions may be established. The authority for this proposal is section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill). The 2002 Farm Bill also covers 16 national research and promotion programs. The research and promotion programs will be addressed separately at a later date.

DATES: Comments must be received by January 2, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by February 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed 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. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All

comments received will be made available for public inspection in the Office of the Docket Clerk at the Marketing Order Administration Branch, AMS, USDA, Room 2525-South; 1400 Independence Avenue, SW., Washington, DC 20250-0237 during regular business hours. A copy of this proposed rule may be found at <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0237, Room 2525-South; Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: George.Kelhart@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 Avenue, SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is being issued by the Department of Agriculture (USDA) in conformance with Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674)(Act), under which the 28 marketing order programs are established, provides that administrative proceedings must be exhausted before parties may file suit in court. Under the Act, any person subject to an order may file a petition with the Secretary of Agriculture 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. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

The authority for this proposed rule is specified in section 10607 of the Farm Security and Rural Investment Act (Pub. L. 107-171; 2002 Farm Bill). The 2002 Farm Bill was enacted May 13, 2002. Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act; 7 U.S.C. 7401) was amended by the 2002 Farm Bill. This amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). The amendment further requires the Secretary of Agriculture to amend any market research and promotion regulations to reflect this exemption.

USDA is proposing amendments to general regulations affecting 28 marketing order programs established under the Act for which it has oversight. These amendments would establish provisions for organic producers and marketers meeting the specified criteria to be exempt from paying assessments for market promotion, including paid advertising, activities.

The FAIR Act amendment covers 28 marketing order programs established under the Act (Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; California nectarines—7 CFR part 916; California peaches and pears—7 CFR part 917; Washington apricots—7 CFR part 922; Washington sweet cherries—7 CFR part 923; Washington/Oregon fresh prunes—7 CFR part 924; Southeastern California grapes—7 CFR part 925; Oregon/Washington winter pears—7 CFR part 927; cranberries grown in States of Massachusetts, *et al.*—7 CFR part 929; tart cherries grown in States of Michigan, *et al.*—7 CFR part 930; Oregon/Washington Bartlett pears—7