

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 451

RIN 3206-AJ65

#### Awards

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations governing Presidential Rank Awards to implement the Treasury and General Government Appropriations Act of 2002, which extends eligibility for Presidential Rank Awards to certain senior career employees. The amendments will also enhance the clarity of the regulations and improve readability.

**EFFECTIVE DATE:** September 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Karen English at (202) 606-2747 or by e-mail at [karen.english@opm.gov](mailto:karen.english@opm.gov).

**SUPPLEMENTARY INFORMATION:** On August 13, 2002, OPM issued an interim rule at 67 FR 52595-52597 amending part 451 and requesting comments on or before October 15, 2002.

#### Comments

OPM received comments from four Federal agencies and two professional organizations. Those comments are addressed below.

#### Purpose

Two agencies favored the interim rule and had no further comments.

One agency recommended that OPM include a statement encouraging agency heads to consider diversity when submitting award nominations and to collect and publish the number of Hispanics receiving the award. OPM did not adopt this suggestion because the award is conferred upon an executive

who has demonstrated extraordinary and sustained career accomplishments regardless of race, gender, age, etc.

One professional organization asked if section 451.303, paragraphs (a) and (b), were intended to use Roman numerals (i) and (ii) rather than Arabic numerals (1) and (2). OPM agrees and has changed paragraphs (a) and (b) to include Arabic numerals (1) and (2) for format consistency throughout the regulation.

Two agencies recommended the official term "senior career employee" vs. "career senior employee" be used consistently throughout the chapter. OPM agrees and has made the change.

In section 451.303(b) we are removing the italics from "Senior career employees" for format consistency throughout the regulation.

#### List of Subjects in 5 CFR Part 451

Decorations, medals, awards, Government employees.

Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

■ Accordingly, the interim rule published on August 13, 2002, amending 5 CFR 451 (67 FR 52595), is adopted as a final rule with the following changes:

#### PART 451—AWARDS

■ 1. The authority citation for part 451 continues to read as follows:

**Authority:** 5 U.S.C. 4302, 4501-4509, E.O. 11438, 12828.

#### Subpart C—Presidential Rank Awards

##### § 451.302 [Amended]

■ 2. Section 451.302(c) is amended by removing the phrase "career senior employees" and adding in its place, the phrase "senior career employees".

##### § 451.303 [Amended]

■ 3. Section 451.303 is amended:

■ A. By redesignating paragraphs (a)(i), (a)(ii), (b)(i) and (b)(ii) as (a)(1), (a)(2), (b)(1) and (b)(2), respectively;

■ B. By removing the italics from the words "Senior career employees" in paragraph (b) introductory text; and

■ C. By removing the words "career senior employees" and adding in its place, the phrase "senior career employees" in newly redesignated paragraphs (b)(1) and (2).

##### § 451.304 [Amended].

■ 4. In Section 451.304(a) and (b) remove the words "career senior employee" and add, in their place the words "senior career employee".

[FR Doc. E7-15470 Filed 8-7-07; 8:45 am]

**BILLING CODE** 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 923

[Docket No. AMS-FV-07-0073; FV07-923-1 FR]

#### Sweet Cherries Grown in Designated Counties in Washington; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2007-2008 and subsequent fiscal periods from \$0.50 to \$0.40 per ton for Washington sweet cherries. The Committee is responsible for local administration of the marketing order regulating the handling of sweet cherries grown in designated counties in Washington. Assessments upon handlers of sweet cherries 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 remains in effect indefinitely unless modified, suspended or terminated.

**EFFECTIVE DATE:** August 9, 2007.

#### 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@usda.gov](mailto:Robert.Curry@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@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@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 923 (7 CFR part 923), as amended, regulating the handling of sweet cherries grown in designated counties in Washington, 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, cherry handlers in designated counties in Washington 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 Washington sweet cherries beginning April 1, 2007, 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 decreases the assessment rate established for the Committee for the 2007-2008 and subsequent fiscal periods from \$0.50 to \$0.40 per ton for Washington sweet cherries 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 sweet cherries in designated counties in Washington. 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 2006-2007 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.50 per ton of sweet cherries handled. This rate 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 May 2, 2007, and unanimously recommended 2007-2008 expenditures of \$71,600. In comparison, last year's budgeted expenditures were \$49,800. The Committee also recommended that the \$0.50 per ton assessment rate be decreased by \$0.10 to \$0.40 per ton of sweet cherries handled. The Committee recommended the lower assessment rate for the purpose of decreasing the monetary reserve, which is approximately \$83,792. Funds in the reserve must be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (7 CFR 923.42).

The major expenditures recommended by the Committee for the 2007-2008 fiscal period include \$22,500 for administration and data management fees, \$36,500 for Committee expenses such as travel, accounting and compliance, and \$7,600 for office expenses—including bonds, insurance, telephone, office equipment and supplies. Budgeted expenses for these items in 2006-2007 were \$25,000, \$16,200, and \$7,100, respectively. Higher expenses are anticipated this season due to a producer survey and other regulatory research expenses requested by the Committee, as well as the associated increase in staff costs.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington sweet cherries. Applying the \$0.40 per ton rate of assessment to the Committee's 120,000 ton crop estimate should provide \$48,000 in assessment income. Income derived from handler

assessments, along with interest income and approximately \$23,600 from the Committee's reserve, should be adequate to cover budgeted expenses. While the monetary reserve held about \$83,792 at the close of the 2006-2007 fiscal period, the Committee estimates that it will close on March 31, 2008, with approximately \$60,267, given the recommended budget of expenses and the income expected from the \$0.40 assessment rate.

The assessment rate established in this rule will 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 will be effective for an indefinite period, the Committee will 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. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will 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 2007-2008 budget has been reviewed and approved by USDA as will those for subsequent fiscal periods.

#### Final Regulatory Flexibility Analysis

Pursuant to 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.

There are approximately 1,500 cherry producers within the regulated production area and approximately 53 regulated handlers. 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 \$6,500,000.

The Washington Agricultural Statistics Service prepared a preliminary report for the 2006 shipping season showing that the sweet cherry fresh market utilization of 136,000 tons sold for an average of \$2,000 per ton. Based on the number of producers in the production area (1,500), the average producer revenue from the sale of sweet cherries in 2006 can therefore be estimated at approximately \$181,333 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than \$6,500,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2007–2008 and subsequent fiscal periods from \$0.50 to \$0.40 per ton for sweet cherries. The Committee also unanimously recommended 2007–2008 expenditures of \$71,600. With the 2007–2008 Washington sweet cherry crop estimate of 120,000 tons, the Committee anticipates assessment income of \$48,000. The Committee recommended the assessment rate decrease for the purpose of decreasing the monetary reserve, which is approximately \$83,792. With this assessment rate and budget, the Committee may need to draw up to \$23,600 from its monetary reserve, thus helping to decrease the reserve to a level that is less than approximately one fiscal period's operating expenses, the maximum permitted by the order.

The major expenditures recommended by the Committee for the 2007–2008 fiscal period include \$22,500 for administration and data management fees, \$36,500 for Committee expenses, and \$7,600 for office expenses. Budgeted expenses for these items in 2006–2007 were \$25,000, \$16,200, and \$7,100, respectively.

The Committee discussed alternatives to this rule. Leaving the assessment rate at the current \$0.50 per ton was initially considered, but not recommended because of the Committee's desire to decrease the level of the monetary reserve so that it is not more than approximately one fiscal period's operational expenses.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2007–2008 season could average about \$2,000 per

ton for fresh Washington sweet cherries. Therefore, the estimated assessment revenue for the 2007–2008 fiscal period as a percentage of total producer revenue is 0.02 percent for Washington sweet cherries.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington sweet cherry industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the May 2, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on the issues.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington sweet cherry 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. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The 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 proposed rule regarding this action was published in the **Federal Register** on June 20, 2007 (72 FR 33922). Copies of the proposed rule were made available to the industry by the Committee and through the Internet by the USDA and the Office of the **Federal Register**. A 10-day comment period ending July 2, 2007, was provided for interested persons to respond to the proposal. No comments were received.

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found

that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule decreases the assessment rate, and thus also decreases the burden on handlers; (2) handlers are currently receiving 2007–2008 sweet cherries from producers; (3) the 2007–2008 fiscal period began on April 1, 2007, and the assessment rate applies to all assessable sweet cherries handled during this and subsequent fiscal periods; (4) handlers are aware of this action which was recommended by the Committee at a public meeting; and (5) a 10-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

#### PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 923.236 is revised to read as follows:

#### § 923.236 Assessment rate.

On and after April 1, 2007, an assessment rate of \$0.40 per ton is established for the Washington Cherry Marketing Committee.

Dated: August 2, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–15397 Filed 8–7–07; 8:45 am]

**BILLING CODE 3410-02-P**