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)

determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

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. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Washington Cherry Marketing Committee:

Proposal No. 1

Amend § 923.45 to read as follows:

§ 923.45 Production and marketing research, promotion and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of cherries. The expense of such projects shall be paid from funds collected pursuant to §§ 923.41 and 923.43.

Proposal No. 2

In § 923.41, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

§ 923.41 Assessments.

* * * * *

(c) Based upon a recommendation of the committee or other available data, the Secretary shall fix the rate of assessment that handlers shall pay on all cherries handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 923.45. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all cherries or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal period.

* * * * *

Proposal No. 3

Add a new § 923.43 to read as follows:

§ 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

Proposal No. 4

Revise § 923.20 to read as follows:

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of seventeen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. Ten members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. One member and his or her respective alternate shall be a public member who is neither a grower nor a handler. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as ''grower members'' of the committee; and six members of the committee who shall be handlers, or officers or employees of handlers are referred to in this part as ''handler members'' of the committee. Five of the grower members and their respective alternates shall be producers of cherries in District 1, and five of the grower members and their respective alternates shall be producers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their representative alternates shall be handlers of cherries in District 2.

Amend § 923.22 by adding a new paragraph (b)(4) to read as follows:

§ 923.22 Nomination.

* * * * *

(4) The grower and handler members of the committee shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

USDA proposes the following:

Proposal No. 5

Revise § 923.21 to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

Proposal No. 6

In § 923.64, redesignate paragraph (d) as paragraph (e), and add a new paragraph (d) to read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of cherries: *Provided*, that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

Proposal No. 7

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: October 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25672 Filed 10–9–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV03–946–1 PR]

Irish Potatoes Grown in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 946

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 nine proposed amendments to Marketing Agreement and Order No. 946, which regulate the handling of Irish potatoes grown in Washington. Seven amendments are proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These are: adding the authority to establish container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; incorporating language currently existing in the Rules and Regulations subpart pertaining to selection and establishment of districts; requiring Committee nominees to submit a signed acceptance letter prior to appointment by the Agricultural Marketing Service (AMS); allowing for nominations to be held at large industry meetings; adding the authority to change the size of the Committee; and adding the authority to allow for additional alternates to serve when a Committee member and that member's alternate are unable to serve. AMS proposed two additional amendments to establish tenure limitations for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain grower support for the order.

DATES: The hearing will begin at 9 a.m. in Moses Lake, Washington, on November 20, 2003.

ADDRESSES: The hearing will be held at the Best Western Hallmark Inn, 3000 Marina Drive, Moses Lake, Washington, 98837, (866)–603–9330.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO 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 container and marking regulations. This would encompass size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in packaging or handling of Irish potatoes grown in Washington.

2. Amend the order to add language to require production for the fresh market in at least 3 out of 5 years preceding nomination to the committee for all producer members.

3. Make administrative changes in § 946.25 ''Selection'' and § 946.31 ''District'' to incorporate language currently in the Rules and Regulation subpart.

4. Amend the order to add language requiring Committee nominees to submit a signed letter of acceptance prior to selection by AMS.

5. Allow for nominations to be held at any industry meeting rather than requiring separate meetings in each of the districts, as currently required by the order.

6. Amend the order to authorize the Committee to recommend changes in the number of Committee members and alternates. Such a recommendation would require an analysis of certain factors within the industry and approval by the Department.

7. Allow an alternate member of the same classification (producer or handler) to serve in a member's place and stead in the event a Committee member and that member's alternate are unable to attend a Committee meeting.