

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. 99 AMS-FV-923-A1; FV-00-923-1]

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 consider amending Marketing Agreement and Order No. 923, hereinafter referred to as the "order." The order regulates the handling of sweet cherries grown in six counties in eastern Washington. The purpose of the hearing is to receive evidence on proposed amendments to the order. Six proposals were submitted by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order. The Committee's proposals would: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; Increase representation on the Committee by adding an additional handler member; Allow for special purpose shipments of cherries to handling operations outside the production area; Provide for collection of late payment charges and/or interest on handlers' late payment of assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a single form. The Fruit and Vegetable Programs (F&V) of the Agricultural Marketing Service (AMS) proposes two additional amendments to bring the program into conformance with current U. S. Department of Agriculture (Department) policy. These provisions would establish a limit on

the number of consecutive terms a person may serve as a member on the Committee and would require that continuance referenda be conducted on a periodic basis to ascertain support for the order. AMS also proposes to allow such changes as may be necessary to the order to conform with any amendment that may result from the hearing.

DATES: The hearing will begin at 9:00 a.m. in Yakima, Washington, on November 16, 1999, and, if necessary, will continue the next day beginning at 9:00 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: Kathleen Finn or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P. O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698 or email at: kathy.finn@usda.gov or anne.dec@usda.gov. 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, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or email at jay.guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is taken 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 the amendments present an irreconcilable conflict with a law, regulation or policy.

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 the Secretary 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 Secretary'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 proposed six amendments to the order that would affect its scope and administrative operations.

(1) Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range. The marketing order's rules and regulation are currently in effect for only six counties in the eastern portion of the State. Sweet cherry production is increasing significantly in other counties that did not have production when the order was promulgated in 1957. The Committee believes expanding marketing order regulations to cover all sweet cherry production east of the Cascades would ensure that sweet cherries produced east of the Cascades in Washington would be of a consistent and high quality.

(2) Increase representation on the Committee by adding one additional handler member. The Committee believes that handler representation should be equal among the districts, especially if the districts are reapportioned to accommodate the additional counties proposed to be included in the production area.

(3) Authorize special purpose shipments, with appropriate safeguards,

allowing movement of cherries to handling operations outside the production area. The Committee believes that facilitating the shipments of cherries outside the production area for packing would provide more flexibility to growers in deciding who would market their cherries. Also, language would be added specifying that the Committee could rescind or deny to a handler, the special purpose shipment certificate if proof satisfactory to the Committee was obtained that the cherries were handled contrary to the special purpose section.

(4) Authorize the Committee, with AMS approval, to collect late payment charges and/or interest on late payments. The Committee believes this would encourage timely remittance of assessments by handlers. The Committee may also recommend other methods of assessment collection with the approval of the Secretary.

(5) Authorize the Committee, with AMS approval, to establish container marking requirements. The Committee believes this would reduce confusion among buyers, help differentiate between grades and varieties of sweet cherry shipments, and improve compliance with order requirements.

(6) Authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection. Currently, members and alternates complete this form after notification of the selection. This proposal would combine two forms currently being used. The Committee believes this will simplify the Committee selection process. The Committee works with AMS in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

The AMS proposes adding two provisions which would help assure that operations and activities of the Committee are reflective of industry opinions and positions. The first provision would establish a limit on the number of consecutive terms a person may serve as member on the Committee.

The second provision would require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

Also, AMS proposes to allow such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is being held for the purpose of: (1) Receiving evidence

about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determining whether there is a need for the proposed amendments to the order; and (3) determining whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act. These points are particularly important for the proposal to expand the production area. Sweet cherry growers and handlers who are not currently subject to the order are encouraged to provide testimony at the hearing.

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, Department 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, except any designated employees of the General Counsel assigned to represent the Committee in this rulemaking proceeding; 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

Marketing agreements, Cherries, 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

Revise § 923.4 to read as follows:

§ 923.4 Production area.

Production area means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and

all of the counties in Washington lying east thereof.

Revise § 923.14 to read as follows:

§ 923.14 District.

District means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 923.31(m):

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

Proposal No. 2

Revise § 923.20 to read as follows:

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of sixteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he/she is an alternate. Ten of the 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. 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 the 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. Four of the grower members and their respective alternates shall be producers of cherries in District 1, and six 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 respective alternates shall be handlers of cherries in District 2.

Proposal No. 3

Amend § 923.54 by revising paragraphs (b) and (c) to read as follows:

§ 923.54 Special purpose shipments.

* * * * *

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all

requirements, under or established pursuant to § 923.41, § 923.52, § 923.53, or § 923.55, the handling of cherries in such minimum quantities, or types of shipments, or for such specified purposes as the committee, with approval of the Secretary, may prescribe. Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent cherries handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cherries pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cherries will not be used for any purpose not authorized by this section. The committee may rescind or deny to any handler the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were handled contrary to the provisions of this section.

Proposal No. 4

Revise § 923.41 by adding a new paragraph (c) to read as follows:

§ 923.41 Assessments.

* * * * *

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary as recommended by the committee. The committee may also recommend other methods of assessment collection with the approval of the Secretary.

Proposal No. 5

Amend § 923.52 by revising paragraph a)(3) to read as follows:

§ 923.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be

used in the packaging or handling of cherries.

* * * * *

Proposal No. 6

Revise § 923.25 to read as follows:

§ 923.25 Acceptance.

Any person prior to selection as a member or an alternate member of the committee shall qualify by filing with the Secretary a written acceptance of willingness to serve on the committee.

The Fruit and Vegetable Programs, Agricultural Marketing Service, proposes the following two amendments.

Proposal No. 7

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. 8

Amend § 923.64 by adding a new sentence at the beginning of paragraph (c) to read as follows:

§ 923.64 Termination

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain where continuance of this part is favored by growers. * * *

* * * * *

Dated: November 3, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99-29196 Filed 11-5-99; 8:45am]

BILLING CODE 3410-02-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to amend the regulations governing Certified Development Companies ("CDCs"). This proposed rule would amend the rules governing CDC Area of Operations (the geographic area where SBA authorizes a CDC to make loans under SBA's Development Company Loan Program ("504 loan")). The proposed rule would cover an applicant requesting to become a CDC; an existing CDC applying to expand its Area of Operations within the State in which it is chartered; an existing CDC applying to expand its Area of Operations beyond the State in which it is chartered into a contiguous bi-sected local economic area ("Local Economic Area"); and an existing CDC applying to expand its Area of Operations outside the State in which it is chartered into another State beyond a Local Economic Area.

The proposed rule also revises when SBA considers a county "adequately served" (when the 504 loan activity within a county precludes the county from being available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request). In some cases, counties would be available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request under the proposed rule that are not available under the current regulations.

The proposed rule would clarify under what circumstances and conditions a CDC may contract out its management and staff functions. It also would address the purposes for which a CDC may use its net income generated in different States. The proposed rule would eliminate a limited liability company from the types of organizations that may apply to become a CDC. Finally, the proposed rule would expressly authorize CDCs to establish Loan Committees and set forth conditions under which they may be used.

DATES: Submit comments on or before December 8, 1999.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, (202) 205-7530.

SUPPLEMENTARY INFORMATION: When Title V of the Small Business Investment Act of 1958—Loans to State and Local Development Companies—was enacted by Public Law 85-699 on August 21, 1958, it defined a Development Company as "an enterprise * * * formed for the purpose