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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV97-922-2 IFR]

Reduced Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rates established under Marketing Order Nos. 922, 923, and 924 for the 1997-98, and subsequent fiscal periods. The Washington Apricot Marketing Committee, Washington Cherry Marketing Committee, and Washington-Oregon Fresh Prune Committee (Committees) are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The 1997-98 fiscal periods for these marketing orders cover the period April 1 through March 31. The assessment rates will continue in effect indefinitely until amended, suspended, or terminated.

DATES: Effective on August 5, 1997. Comments received by September 3, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456,

Washington, DC 20090-6456; Fax: (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements and Order No. 922 (7 CFR 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "orders." The marketing agreements and orders are 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 (Department) 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 orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Washington apricots, Washington sweet cherries,

and Washington-Oregon fresh prunes beginning April 1, 1997, and continuing 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 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 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.

This rule decreases the assessment rates established for the Committees for the 1997-98 and subsequent fiscal periods from \$3.00 to \$2.00 per ton for Washington apricots, from \$1.00 to \$0.75 per ton for Washington sweet cherries, and from \$1.00 to \$0.75 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committees recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period

indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Washington Apricot Marketing Committee met on May 13, 1997, and unanimously recommended 1997-98 expenditures of \$9,917 and an assessment rate of \$2.00 per ton of apricots. In comparison, last year's budgeted expenditures were \$9,385. The assessment rate of \$2.00 is \$1.00 less than the rate currently in effect. At the current rate of \$3.00 per ton and an estimated 1997 fresh apricot production of 5,300 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed assessment rates of \$1.00 and \$1.50, but decided that an assessment rate of less than \$2.00 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the \$2.00 per ton rate of assessment to the Committee's 5,300 ton shipment estimate should provide \$10,600 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Washington Cherry Marketing Committee met on May 12, 1997, and unanimously recommended 1997-98 expenditures of \$57,545 and an assessment rate of \$0.75 per ton of cherries. In comparison, last year's budgeted expenditures were \$56,665. The assessment rate of \$0.75 is \$0.25 less than the rate currently in effect. At the current rate of \$1.00 per ton and an estimated 1997 sweet cherry production of 54,000 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed an assessment rate of \$0.50, but decided that an assessment rate of less than \$0.75 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington.

With cherry shipments for the year estimated at 54,000 tons, the assessment rate of \$0.75 should provide \$40,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Oregon-Washington Fresh Prune Marketing Committee met on May 28, 1997, and unanimously recommended 1997-98 expenditures of \$7,233 and an assessment rate of \$0.75 per ton of prunes. In comparison, last year's budgeted expenditures were \$6,645. The assessment rate of \$0.75 is \$0.25 less than the rate currently in effect. At the current rate of \$1.00 per ton and an estimated 1997 fresh prune production of 6,000 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed an assessment rate of \$0.50, but decided that an assessment rate of less than \$0.75 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. With fresh prune shipments for the year estimated at 6,000 tons, the \$0.75 per ton assessment rate should provide \$4,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenses recommended by the Committees for the 1997-98 year include manager's salary, office rent and maintenance, Committee travel, and compliance officer.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is 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 Committee meetings are available from the Committee or the

Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee 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 1997-98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 initial 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 55 Washington apricot handlers, 55 Washington sweet cherry handlers, and 30 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule decreases the assessment rates established for the Committees and collected from handlers for the 1997-98 and subsequent fiscal periods. The Committees unanimously recommended 1997-98 expenditures of \$9,917 for apricots, \$57,545 for cherries, and \$7,233 for prunes and an assessment rate of \$2.00 per ton of apricots, \$0.75 per ton for cherries, and \$0.75 per ton for prunes. The assessment rate of \$2.00 for apricots is \$1.00 less than the rate currently in effect. The assessment rates of \$0.75 for cherries and prunes are

\$0.25 less than the rates currently in effect. At current assessment rates, the Committees' reserves were projected to exceed the amount authorized in the orders of approximately one fiscal period's operational expenses. Therefore, the Committees voted to lower their respective assessment rates and use more of their reserves to cover expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves. Major expenses recommended by the Committees for the 1997-98 year include manager's salary, office rent and maintenance, Committee travel, and compliance officer.

Apricot shipments for 1997 are estimated at 5,300 tons, which should provide \$10,600 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Sweet cherry shipments for 1997 are estimated at 54,000 tons, which should provide \$40,500 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Fresh prune shipments for 1997 are estimated at 6,000 tons, which should provide \$4,500 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997-98 season will range between \$600 and \$1,400 per ton for Washington apricots, between \$1,500 and \$2,200 per ton for Washington sweet cherries, and between \$200 and \$500 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 1997-98 fiscal period as a percentage of total grower revenue will range between 0.14 and 0.33 percent for Washington apricots, between 0.03 and 0.05 percent for Washington sweet cherries, and between 0.15 and 0.38 percent for Washington-Oregon fresh prunes.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose

some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 12, 13, and 28 meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant material presented, including the information and recommendations submitted by the Committees 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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 action reduces the current assessment rates for Washington apricots and cherries, and Washington-Oregon fresh prunes; (2) the 1997-98 fiscal period began on April 1, and the marketing orders require that the rate of assessment for each fiscal period apply to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is

similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continue to read as follows:

Authority: 7 U.S.C. 601-674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. Section 922.235 is amended by removing "April 1, 1996," and adding in its place "April 1, 1997," and by removing "\$3.00" and adding in its place "\$2.00."

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. Section 923.236 is amended by removing "April 1, 1996," and adding in its place "April 1, 1997," and by removing "\$1.00" and adding in its place "\$0.75."

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

4. Section 924.236 is amended by removing "April 1, 1996," and adding in its place "April 1, 1997," and by removing "\$1.00" and adding in its place "\$0.75."

Dated: July 29, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.

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