

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on July 29, 2004 (69 FR 45231). Copies of that rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 27, 2004, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders 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.

#### List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

#### PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 906 which was published at 69 FR 45231 on July 29, 2004, is adopted as a final rule without change.

Dated: October 19, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-23827 Filed 10-22-04; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 922 and 923

[Docket No. FV04-922-1 FIR]

#### Decreased Assessment Rates for Specified Marketing Orders

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rates established for the Washington Apricot Marketing Committee and the Washington Cherry Marketing Committee (Committees) for the 2004-2005 and subsequent fiscal periods. This final rule decreases the assessment rates established for the Committees from \$3.00 to \$2.50 per ton for Washington apricots and from \$1.00 to \$0.75 per ton for Washington sweet cherries. The Committees are responsible for local administration of the marketing orders that regulate the handling of apricots and cherries grown in designated counties in Washington. Authorization to assess apricot and cherry handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for both marketing orders began April 1 and ends March 31. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** November 24, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Marketing Specialist, 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 George J. Kelhart, Technical Advisor, 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.

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 Agreement and Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington, and Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "orders." The 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."

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 orders now in effect, handlers in designated counties in Washington 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 and Washington sweet cherries beginning April 1, 2004, 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 continues to decrease the assessment rates established for the Committees for the 2004-2005 and subsequent fiscal periods from \$3.00 to \$2.50 per ton for Washington apricots and from \$1.00 to \$0.75 per ton for Washington sweet cherries.

The orders provide authority for the Committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from

handlers to administer the program. The members of the Committees are producers and handlers of apricots and sweet cherries in designated counties in Washington. They are familiar with the Committees' needs and with the costs for goods and services in their local areas 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 2003–2004 and subsequent fiscal periods, the Washington Apricot Marketing Committee (Apricot Committee) recommended, and USDA approved, an assessment rate of \$3.00 per ton of apricots handled. This assessment rate was to continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Apricot Committee or other information available to USDA.

The Apricot Committee met on May 17, 2004, and unanimously recommended 2004–2005 expenditures of \$10,594 and a decreased assessment rate of \$2.50 per ton of assessable apricots handled. In comparison, last year's budgeted expenditures were \$10,559. The assessment rate of \$2.50 is \$0.50 lower than the rate previously in effect. Due to an anticipated increase in apricot production this season, the Apricot Committee recommended the assessment rate decrease to maintain the level of income at or near the level of expenses.

The assessment rate recommended by the Apricot Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots. Applying the \$2.50 per ton rate of assessment to the Apricot Committee's 4,350-ton crop estimate should provide \$10,875 in assessment income. Thus, income derived from handler assessments will be adequate to cover the recommended 2004–2005 budget of \$10,594. Funds in the reserve (\$11,418 as of March 31, 2004), will be maintained at a level equal to approximately one fiscal period's operational expenses as authorized by the order (§ 922.42.)

For the 2003–2004 and subsequent fiscal periods, the Washington Cherry Marketing Committee (Cherry Committee) recommended, and the USDA approved, an assessment rate of \$1.00 per ton of sweet cherries handled. This rate was to continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and

information submitted by the Cherry Committee or other information available to USDA.

The Cherry Committee met on May 18, 2004, and unanimously recommended 2004–2005 expenditures of \$72,297 and a decreased assessment rate of \$0.75 per ton of assessable cherries handled. In comparison, last year's budgeted expenditures were \$71,865. The assessment rate of \$0.75 is \$0.25 lower than the rate previously in effect. Due to an anticipated increase in cherry production this season, the Cherry Committee recommended the assessment rate decrease in order to maintain the level of income near the level of expenses.

The assessment rate recommended by the Cherry Committee was derived by dividing anticipated expenses by expected shipments of Washington sweet cherries. Applying the \$0.75 per ton rate of assessment to the Cherry Committee's 112,600-ton crop estimate should provide \$84,450 in assessment income. Thus, income derived from handler assessments will be adequate to cover the recommended 2004–2005 budget of \$72,297. Funds in the reserve (\$58,970 as of March 31, 2004), will be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 923.42.)

Both Committees are managed from the same office, thus combined major expenses recommended by the Committees for the 2004–2005 year include staff salaries (\$50,572), rent and maintenance (\$6,624), compliance (\$4,740), and Committee travel and compensation (\$3,200). These budgeted expenses are the same as those approved for the 2003–2004 fiscal period.

The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of the Committees' meetings are available from the Committees or USDA. The Committees' meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking will be

undertaken as necessary. The Committees' 2004–2005 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

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

There are approximately 272 apricot producers and 1,800 sweet cherry producers in designated counties in Washington. In addition, there are approximately 28 Washington apricot handlers and 69 Washington sweet cherry handlers subject to regulation under the respective marketing orders. 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 \$5,000,000.

Based on the total number of apricot producers (272), the most recent three-year average fresh apricot production of 3,975 tons (Apricot Committee records), and the most recent three-year average producer price of \$355 per ton as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of apricots is approximately \$5,188. In addition, based on Apricot Committee records and 2003 f.o.b. prices ranging from \$10.50 to \$12.50 per 24-pound container as reported by USDA's Market News Service (MNS), the entire Washington apricot industry handles less than \$5,000,000 worth of apricots. Based on this, the majority of the apricot producers and handlers may be classified as small entities.

Based on the total number of sweet cherry producers (1,800), the most recent three-year average fresh cherry production of 79,763 tons (Cherry Committee records), and the most recent three-year average producer price of \$1,390 per ton as reported by NASS, the average annual revenue per producer

from the sale of cherries is approximately \$61,595. In addition, based on Cherry Committee records and an average 2003 f.o.b. price of \$28.00 per 20-pound container as reported by the MNS, 75 percent of the Washington cherry handlers ship under \$5,000,000 worth of cherries. In view of the foregoing, the majority of Washington cherry producers and handlers may be classified as small entities.

This rule continues to decrease the assessment rates established for the Committees and collected from handlers for the 2004–2005 and subsequent fiscal periods from \$3.00 to \$2.50 per ton for apricots and from \$1.00 to \$0.75 per ton for sweet cherries. The Apricot Committee and the Cherry Committee unanimously recommended 2004–2005 expenditures of \$10,594 and \$72,297, respectively. With the 2004–2005 crop estimates of 4,350 tons for apricots and 112,600 tons for sweet cherries, the Committees anticipate assessment income of \$10,875 and \$84,450, respectively, which will be adequate to cover budgeted expenses for both programs. These assessment incomes will maintain the Committees' reserve funds at or near the levels authorized by the orders of approximately one fiscal period operational expenses (§§ 922.42 and 923.42).

Both Committees are managed from the same office, thus combined major expenses recommended by the Committees for the 2004–2005 year include staff salaries (\$50,572), rent and maintenance (\$6,624), compliance (\$4,740), and Committee travel and compensation (\$3,200). These budgeted expenses are the same as those approved for the 2003–2004 fiscal period.

The Committees discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs.

A review of historical information and information pertaining to the crop year indicates that the producer price for the 2004–2005 season could range between \$353 and \$357 per ton for Washington apricots and between \$1,230 and \$1,550 per ton for Washington sweet cherries. Therefore, the estimated assessment revenue for the 2004–2005 fiscal period as a percentage of total producer revenue could range between 0.70 and 0.71 percent for Washington apricots

and between 0.05 and 0.06 percent for Washington sweet cherries.

This action continues to decrease 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 rates reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committees' meetings were widely publicized throughout the Washington apricot and Washington sweet cherry industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all Committee meetings, the May 17 and May 18, 2004, meetings were public meetings and all entities, both large and small, were able to express views on the issues.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot or 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The interim final rule concerning this action was published in the **Federal Register** on July, 29, 2004 (69 FR 45233). Copies of that rule were also mailed or sent via facsimile to all Committee members. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 27, 2004. One comment was received during that period. The commenter questioned the understandability of the rule. The comment did not address the substance of the interim final rule. We believe that the rule is clear and understandable. Thus, no changes are made as a result of this comment.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ama.usda.gov/fv/maob.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 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.

#### 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.

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

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

■ Accordingly, the interim final rule amending 7 CFR parts 922 and 923 which was published at 69 FR 45233 on July 29, 2004, is adopted as a final rule without change.

Dated: October 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–23826 Filed 10–22–04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 86–ANE–7; Amendment 39–13822; AD 2004–21–01]

RIN 2120–AA64

#### Airworthiness Directives; Hartzell Propeller Inc. (Formerly Hartzell Propeller Products Division) Model HC–B5MP–3( )/M10282A( ) +6 Five Bladed Propellers; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments; correction

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2004–21–01. That AD applies to certain Hartzell Propeller Inc. (formerly Hartzell Propeller Products Division) Model HC–B5MP–3( )/M10282A( )+6 five bladed propellers. We published AD 2004–21–01 in the **Federal Register** on October 14, 2004, (69 FR 60952). The amendment number in the Amendatory Language is incorrect. This document