

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 53 to 209, revised as of January 1, 1997, § 56.36 is corrected by revising the last sentence of paragraphs (a)(2) and (b)(2) to read as follows:

§ 56.36 Information required on and form of grademark.

* * * * *

(a) * * *

(2) * * * The size or weight class of the product may be omitted from the grademark, provided, it appears prominently on the main panel of the carton.

* * * * *

(b) * * *

(2) * * * The grademark shall be printed on the carton.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97-930-5 IFR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Issuance of Grower Diversion Certificates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes terms and conditions for the issuance of grower diversion certificates by the Cherry Industry Administrative Board (Board) under the newly promulgated marketing order for tart cherries. In the event volume regulations are issued by the Secretary for the 1997 crop year, handlers could use such certificates in order to satisfy their restricted percentage amounts. Tart cherries handlers in Oregon, Pennsylvania, Washington and Wisconsin (Districts 5, 6, 8, and 9) would not be subject to volume regulation, if implemented, because these districts do not currently produce adequate tonnage to trigger such regulation under the order.

DATES: Effective August 26, 1997; comments received by September 24, 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. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530-S, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 720-5053, 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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This marketing agreement and order 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 order provisions now in effect, preliminary free and restricted percentages have been established for tart cherries acquired by handlers during the 1997 crop year, July 1, 1997, through June 30, 1998. Final free and restricted percentages may be established at a later date. This rule authorizes the issuance of diversion certificates to growers for cherries diverted during the 1997 crop year. 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. A 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 provides for the issuance of diversion certificates to growers in volume regulated districts under the tart cherry marketing order for the 1997 crop year. The order became effective September 25, 1996, and the initial Cherry Industry Administrative Board was appointed in December 1996. The Board held several meetings in January, February, March and June 1997, to consider its start-up costs and establish rules and regulations to implement the order authorities. At its meetings, the Board unanimously recommended that