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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV99-930-3 FR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0025 per pound to \$0.00225 per pound. The interim final rule also decreased the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00125 per pound to \$0.001125 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Committee) under Marketing Order No. 930 for the 1999-2000 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 29, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room

2530-S, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 720-2491; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, 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 E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (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." The 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 now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 1999, 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 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 continues in effect a decrease in the assessment rate established for the Board for the 1999-2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0025 to \$0.00225 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree also was decreased from \$0.00125 per pound to \$0.001125 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997-98 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 18-19, 1999, and unanimously recommended 1999-2000 expenditures of \$497,780 and an assessment rate of \$0.00225 per pound of cherries that are utilized in the production of tart cherry products other

than juice, juice concentrate, or puree, and an assessment rate of \$0.001125 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were \$540,000. Decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons, and the Board wants to reduce handler costs and keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in § 930.42(a). The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 1999–2000.

The major expenditures recommended by the Board for the 1999–2000 crop year include \$222,780 for personnel, \$100,000 for Board meetings, and \$100,000 for compliance. Budgeted expenses for these items in 1998–99 were \$150,000 for personnel, \$80,000 for Board meetings, and \$175,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued

products would be approximately \$460,125 (204.5 million pounds × \$0.00225 per pound). Potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$62,500 (55.5 million pounds × \$0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at \$522,625, which will be adequate to cover expenses. Funds in the reserve (currently \$225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

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

Although the assessment rates are effective for an indefinite period, the Board 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 Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 900 producers of tart cherries in the regulated area. The number of reported tart cherry producers in the regulated area has been reduced from 1,220 to 900 based on more recent information received by the Board. 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 tart cherry producers and handlers may be classified as small entities.

This rule continues in effect decreases in the assessment rate established for the Board and collected from handlers for the 1999–2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0025 to \$0.00225 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00125 to \$0.001125 per pound. The Board unanimously recommended 1999–2000 expenditures of \$497,780 and the reduced assessment rates. The quantity of assessable tart cherries for the 1999–2000 crop year is estimated at 260 million pounds. Assessment income, based on this crop, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 1999–2000 fiscal period include \$222,780 for personnel, \$100,000 for Board meetings, and \$100,000 for compliance. Budgeted expenses for these items in 1998–99 were \$150,000 for personnel, \$80,000 for Board meetings, and \$175,000 for compliance.

The Executive Committee of the Board, after discussing a proposed budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have approximately one year's budget amount in the operating reserve.

However, after considerable discussion, the Board concluded it should reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Further, the amount budgeted for Board compliance costs has been reduced. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to decrease the assessment rates.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$460,125 (204.5 million pounds × \$0.00225 per pound). Potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$62,500 (55.5 million pounds × \$0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at \$522,625, which will be adequate to cover expenses. Funds in the reserve (currently \$225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

This action decreases 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, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 18–19, 1999, meeting was a public meeting 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 imposes no additional reporting or recordkeeping requirements on either small or large tart 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.

The Department 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 27, 1999. Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the office of the Federal Register. That rule provided a 60-day comment period which ended September 27, 1999. No comments were received.

A small business guide on complying with fruit, vegetable and specialty crop marketing agreement and orders may be viewed at the following website: <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 Board and other available information, it is found that finalizing this interim final rule, without modifications, as published in the **Federal Register** (64 FR 40511), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 64 FR 40511 on July 27, 1999, is adopted as a final rule without change.

Dated: October 26, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28377 Filed 10–28–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99–984–2 FR]

Walnuts Grown in California; Reporting Walnuts Grown Outside of the United States and Received by California Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the administrative rules and regulations of the Federal marketing order for California walnuts (order) to require handlers to report receipts of walnuts grown outside of the United States. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Requiring handlers to report to the Board receipts of walnuts grown outside of the United States will allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product. This will facilitate program administration.

EFFECTIVE DATE: This rule becomes effective November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, 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. Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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 E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the “order.” The 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.”