

through the Internet by the Office of the Federal Register. A 15-day comment period ending July 18, 2000, was provided to allow interested persons to respond to the proposal. 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 matter 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule needs to be in place by August 15, 2000, because shipments of Anjou pears from the 2000 crop are expected to begin shortly thereafter; (2) handlers are aware of this rule, which was discussed and recommended at several public meetings, and are prepared to operate under the quality and inspection requirements established herein; and (3) a 15-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

#### **PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON**

1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 927.105 is revised to read as follows:

#### **§ 927.105 Communications.**

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to: Winter Pear Control Committee, 4382

SE International Way, Suite A, Milwaukie OR 97222–4635.

3. A new § 927.316 is added to read as follows:

#### **§ 927.316 Handling regulation.**

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and (2) any such pears have an average pressure test of 14 pounds. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: August 1, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–19875 Filed 8–4–00; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 930**

[Docket No. FV00–930–3 FR]

#### **Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Decreased Assessment Rates**

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound. This rule also decreases the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.001125 to \$0.00085 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 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 begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** August 8, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737 telephone: (301) 734–5243; 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](mailto: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, 2000, 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 decreases the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree is decreased from \$0.001125 to \$0.00085 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 1999–2000 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 2, 2000, and unanimously recommended 2000–2001 expenditures of \$455,000 and an

assessment rate of \$0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and an assessment rate of \$0.00085 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were \$497,780. Decreased assessment rates were recommended by the Board because the 2000 crop is expected to be large. In addition, 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) of the order. The decreased assessment rates together with funds from the Board's operating reserve and interest income are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include \$175,000 for personnel, \$120,000 for compliance, and \$75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were \$222,780 for personnel, \$100,000 for Board meetings, and \$100,000 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 provision 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 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 the assessment rates, the Board estimated assessable tart cherry production for the 2000–2001 crop year at 260 million pounds. It further estimated that about 245 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 15 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 \$416,500 (245 million pounds × \$0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$12,750 (15 million pounds × \$0.00085 per pound). Therefore, the total assessment income for 2000–2001 is estimated at \$429,250. This amount plus adequate supplies in the reserve and interest income will be sufficient to cover budgeted expenses. Funds in the reserve (currently \$300,000) will be kept within the approximately one year's operational expenses permitted by the order (7 CFR 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 rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 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 action 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 rules 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 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) 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 decreases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.001125 to \$0.00085 per pound. The Board unanimously recommended 2000–2001 expenditures of \$455,000 and the reduced assessment rates. The quantity of assessable tart cherries for the 2000–2001 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include \$175,000 for personnel, \$120,000 for compliance, and \$75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were \$222,780 for personnel, \$100,000 for compliance, and \$100,000 for Board meetings.

Decreased assessment rates were recommended by the Board this year because the Board expects the 2000 crop to be large. In addition, the Board wants to reduce handler costs and wants to keep its monetary reserve within the authorized maximum of approximately

one year's operational expenses as specified in § 930.42(a).

The Board discussed the alternative of continuing the existing assessment rates, but concluded that the Board should operate as efficiently as possible and the amount collected at the higher rates could cause the operating reserve to exceed what is actually needed. 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 245 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 15 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 \$416,500 (245 million pounds × \$0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$12,750 (15 million pounds × \$0.00085 per pound). Therefore, the total assessment income for 2000–2001 is estimated at \$429,250. This amount plus adequate supplies in the reserve and interest income will be sufficient to cover budgeted expenses. Funds in the reserve (currently \$300,000) will be kept within the approximately one year's operational expenses permitted by the order (7 CFR 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, decreasing the assessment rate reduces 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 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were 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.

A proposed rule concerning this action was published in the **Federal Register** on May 22, 2000. 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 30-day comment period which ended June 21, 2000. 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 Board and other available information, it is hereby found that this final 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the fiscal period began July 1, 2000, and the assessment rates apply to all cherries received during the 2000–2001 and subsequent fiscal periods. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30–day comment period was provided for in the proposed rule.

#### **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**

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

**§ 930.200 Handler assessment rates.**

On and after July 1, 2000, the assessment rate imposed on handlers shall be \$0.0017 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be \$0.00085 per pound.

Dated: August 1, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-19873 Filed 8-4-00; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 945**

[Docket No. FV00-945-1 FIR]

**Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Handling Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, with change, the provisions of an interim final rule relaxing pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound cartons to better meet buyer needs. Prior to this action, only U.S. No. 1 and better grade potatoes could be shipped in cartons. This change was recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order. This rule continues in effect relaxed pack requirements which allow handlers to ship a substantial amount of U.S. No. 2 grade potatoes in cartons, thus meeting customer demand and maximizing producer returns.

**EFFECTIVE DATE:** August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; 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 complying with this regulation 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 E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. 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.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the Idaho-Eastern Oregon potato marketing order. Prior to this

action, pack requirements specified that all potatoes packed in cartons were to be inspected and certified as meeting U.S. No. 1 grade or better, and that potato size be conspicuously marked on all cartons (except when used as a master container). Grade and size requirements in the order are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540-51.1566), and the size must be marked consistent with § 51.1545 of the standards. Also, all varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1-15, and the White Rose and red skinned varieties from August 1-December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements.

This rule continues in effect pack requirements which allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided each carton is permanently and conspicuously marked as to grade. This change allows handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The Committee met on January 18, 2000, and again by telephone on February 3, 2000, and unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 or better grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade.

To meet the needs of the food service industry, the Committee recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color that are permanently and conspicuously marked as to grade. Currently, potatoes packed in cartons are required to grade at least U.S. No. 1. At its meeting on January 18, 2000, the unanimous consensus of the Committee was that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed a motion to relax the pack requirements.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties encountered in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar