

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 923

[Docket No. FV02-923-1 IFR]

#### Sweet Cherries Grown in Designated Counties in Washington; Establishment of Procedures To Allow the Grading or Packing of Sweet Cherries Outside the Production Area

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule allows the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order (order). The order regulates the handling of sweet cherries grown in designated counties in Washington. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Washington Cherry Marketing Committee (Committee) on forms provided by the Committee. The reporting requirement will provide the Committee with safeguard information on the grading or packing of sweet cherries outside the production area to assure that acceptable quality fruit is shipped. This rule will provide greater flexibility in the grading, packing, and marketing of Washington sweet cherries. In some cases, the facilities outside the production area are closer to where the fruit is produced, and the ability to grade and pack outside the production area would reduce costs. This rule was recommended unanimously by the Committee, the agency responsible for local administration of the order.

**DATES:** Effective April 3, 2003; comments received by June 2, 2003 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### 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, 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, 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 Avenue 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 No. 134 and Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, 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 of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the 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 the 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.

Minimum grade, size, maturity, container, pack and inspection requirements are currently established under the order. This rule establishes procedures and safeguard requirements that allow for the grading or packing of Washington sweet cherries outside the production area. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Committee on forms provided by the Committee.

Consistent with the authorities and procedures outlined in the Act, the order was amended on November 21, 2001 (66 FR 58350). One of the amendments increased the size of the production area to include all counties east of the Cascade Range and provided authority in § 923.54 for the establishment of procedures to allow the shipment of Washington sweet cherries outside the production area for grading and packing. Section 923.54 also provides authority for the establishment of such safeguards as may be necessary to ensure the sweet cherries are handled in accordance with the order's provisions.

The Committee met on May 14, 2002, and unanimously recommended the establishment of procedures and safeguard requirements to allow the grading or packing of sweet cherries

outside the production area. Currently, all cherries are required to be graded and packed before leaving the production area. Committee members believe that this will give shippers an opportunity to choose those grading and packing facilities that will be most beneficial to their individual circumstances. The grading and packing costs that are charged to growers may be different among different handlers in the production area or packing facilities outside the production area. There may be differences in the type of packaging or other services offered by packing facilities within or outside the production area.

For example, a packing facility outside the area of production is experimenting with modified atmosphere packaging that increases the shelf life of sweet cherries. There are also Washington sweet cherry growers who are part owners of packing facilities that are located outside the area of production, and it may be advantageous for them to be able to deliver to those facilities for grading and packing. Finally, some of the facilities are closer to where the fruit is produced, and allowing these facilities to be used for grading, packing, or both could reduce producer and handler delivery costs.

The Committee believes that the minimum grade, size, maturity, container, and pack requirements established under the order are very important to the industry. The Committee believes such requirements create orderly marketing, are good for consumers, encourage repeat purchases, and ultimately improve returns to growers. Therefore, the Committee also recommended the establishment of safeguards to ensure that all sweet cherries graded and packed outside the production area are ultimately inspected and certified by the Federal or Federal-State Inspection Service as meeting the minimum grade, size, maturity, container, and pack requirements established under the order. Persons desiring to ship or receive sweet cherries for grading or packing outside the production area will apply to the Committee on a *Shippers/Receivers Application for Special Purpose Shipment Certificate*. Such applicants will submit an application each year prior to shipping or receiving sweet cherries for grading or packing outside the production area. Information collected on the application will include the date, name, address, phone number, signature of the applicant, and such other information as the Committee may require. The form includes a certification that all production are cherries graded or

packed outside the production area will be inspected by the Federal or Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment.

After the Committee approves an application, the applicant within the area of production and the applicant packing facility outside the area will be required to submit a weekly *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped out of the production area for grading or packing, along with inspection certificates, and other information required by the Committee for verification purposes. Information collected on the reports will include the names, addresses, telephone numbers, signatures of the applicants, names of the growers and handlers of such cherries, and the total quantities of each variety of cherries shipped or received. These reports will be submitted to the Committee at the close of business every Friday during those weeks when the shipper applicant has shipped or the receiver applicant has received sweet cherries for grading and packing outside the production area. The Committee estimates that each affected applicant will submit approximately 10 of these reports annually.

#### Initial 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 action 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.

Based on Committee data, there are approximately 1,500 producers (growers) of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The Committee estimates that there are about 6 prospective applicants that may take advantage of this marketing opportunity. Small agricultural producers are defined by the Small Business Administration (SBA) (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 Committee data, the average production of sweet cherries in Washington State for the last three years is 64,676 tons. Based on Washington Agricultural Statistics Service data, the average producer price for sweet cherries in Washington State for the last three years is \$1,943 per ton. With a Committee estimated 1,500 sweet cherry producers of record, the average annual producer revenue is calculated to be approximately \$83,777. Using Committee data regarding each individual handler's total shipments during the 2001 marketing year and a Committee estimated average F.O.B. price of \$24.00 per 20-pound container in 2001, 79 percent of the Washington sweet cherry handlers ship under \$5,000,000 worth of sweet cherries and 21 percent ship over \$5,000,000 worth of sweet cherries. Therefore, the majority of Washington sweet cherry producers and handlers may be classified as small entities. Also, there are an estimated 6 packing facilities or receivers that would be affected by this action. Although their size is not known, it is estimated that most would be considered small entities.

Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

This rule will allow persons to ship Washington sweet cherries outside the area of production for grading and packing. Applicants desiring to ship or receive sweet cherries for grading or packing outside the production area will be required to submit an application to the Committee. The applicants will certify that all production area cherries graded or packed outside the production area will be inspected by the Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment. Persons who are approved by the Committee to ship or receive will report all production area sweet cherries shipped or received for grading or packing outside the production area at the close of business every Friday.

Regarding the impact of the proposed action on affected entities, this rule will

impose minimal additional costs. As previously mentioned, the Committee estimates that about six prospective applicants may desire to ship or receive sweet cherries for grading or packing outside the production area during the marketing year. Such applicants will be required to submit a *Shippers/Receivers Application for Special Purpose Shipment Certificate* and receive approval from the Committee prior to shipping or receiving any production area sweet cherries each year for grading or packing. After the Committee approves an application, both applicants will be required to submit a weekly *Special Purpose Statement Report* to the Committee when Washington sweet cherries are shipped or received for grading or packing along with inspection certificates or other information required by the Committee for verification purposes. The Committee estimates that each affected applicant will submit about 10 of these reports annually. The annual industry burden associated with this information collection is estimated to total approximately 5 hours.

An alternative to this action would be to not allow Washington sweet cherries to be shipped outside the production area for grading or packing. This alternative would limit the flexibility of growers and handlers to make decisions related to the grading, packing, and marketing of Washington sweet cherries. Another alternative would be to allow shipments of such sweet cherries for grading or packing outside the production area, but not require any reporting. The Committee did not support this alternative because of the lack of any safeguards to ensure compliance with the handling requirements implemented under the order. Allowing the shipment of Washington sweet cherries outside the production area for grading or packing is a relaxation of order requirements and any costs related to additional reporting will be greatly outweighed by the benefits of allowing such shipments.

This rule will impose an additional reporting and recordkeeping burden on persons who ship or receive sweet cherries for grading or packing outside the production area. This action requires two new Committee forms. The information collection requirements are discussed in the following section.

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. In addition, USDA has not identified any relevant Federal rules

that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the sweet cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 14, 2002, 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.

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.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking emergency approval for a new information collection request for Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

*Title:* Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923.

*OMB Number:* 0581-NEW.

*Type of Request:* New collection.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Washington sweet cherry marketing order program, which has been operating since 1957.

On May 14, 2002, the Committee unanimously recommended the establishment of procedures and safeguard requirements to allow the grading or packing of sweet cherries outside the production area. This information will be reported on two new Committee forms. The safeguard requirements require an applicant to apply to the Committee on a *Shipper/Receivers Application for Special Purpose Shipment Certificate* form once a year, and receive approval from the Committee, prior to shipping or receiving sweet cherries for grading or

packing outside the production area. After the Committee approves the application, the applicant will be required to submit weekly a *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped or received for grading or packing along with inspection certificates or other information required by the Committee for verification purposes. The new Committee forms will help ensure compliance with the regulations and assist the Committee and the USDA with oversight and planning.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the new information collections under the order is as follows:

*Shippers/Receivers Application for special Purpose Shipment Certificate.*

*Estimate of Burden:* Public reporting burden for this collection is estimated to average 2 minutes per response.

*Respondents:* Persons who ship or receive Washington sweet cherries for grading or packing outside the production area.

*Estimated Number of Respondents:* 6.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual burden on Respondents:* 0.18 hours.

*Special Purpose Shipment Report.*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* Persons who ship or receive Washington sweet cherries for grading or packing outside the production area.

*Estimated Number of Respondents:* 6.

*Estimated Number of Responses per Respondent:* 10.

*Estimated Total Annual Burden on Respondents:* 4.98 hours

*Comments:* Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Marketing Order for Sweet Cherries Grown in Designated Counties in Washington and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS has obtained emergency approval from OMB for the use of the new forms for the year. This collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops." 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.

This rule allows the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order. Persons desiring to ship or receive sweet cherries for grading or packing outside the production area will apply and report to the Washington Cherry Marketing Committee on forms provided by the Committee. The reporting requirement will provide the Committee with safeguard information to ensure compliance on the grading or packing of sweet cherries outside the production area.

Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to 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) The order amendments prompting these changes were

implemented on November 21, 2001, after approval in a grower referendum;

(2) the Committee unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input;

(3) Washington sweet cherry growers and handlers are aware of this rule and need no additional time to comply with the relaxed requirements;

(4) sweet cherries will begin being shipped in June; and

(5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

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

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 923.322 is amended by redesignating paragraphs (f) and (g) as (g) and (h), respectively, and adding a new paragraph (f) to read as follows:

#### § 923.322 Washington Cherry Regulation.

\* \* \* \* \*

(f) *Grading or packing cherries outside the production area.* (1) Persons desiring to ship or receive cherries for grading or packing outside the production area shall apply to the committee on a "Shippers/Receivers Application for Special Purpose Shipment Certificate" form, and receive approval from the Committee. The application shall contain the following: (i) Name, address, telephone number, and signature of applicant;

(ii) Certification by the applicant that cherries graded and packed outside the production area shall be inspected by the Federal-State Inspection Service and shall meet the grade, size, maturity, container, and pack requirements of this section prior to shipment; and

(iii) Such other information as the committee may require.

(2) Each approved applicant shall furnish to the committee, at the close of business every Friday, a report containing the following information on a "Special Purpose Shipment Report" form:

(i) Name, address, telephone number, and signature of applicant;

(ii) Names of growers and handlers of such cherries;

(iii) The total quantity of each variety of cherries; and

(iv) Such other information as the committee may require.

(3) The committee may rescind or deny to any applicant its approval of the "Shippers/Receivers Application for Special Purpose Shipment Certificate" if proof satisfactory to the committee is obtained that any cherries shipped or received by such applicant for grading or packing were handled contrary to the provisions of this section.

\* \* \* \* \*

Dated: March 26, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-7846 Filed 4-1-03; 8:45 am]

**BILLING CODE 3410-02-M**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV03-989-4 IFR]

#### Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2002-03 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes final volume regulation percentages for 2002-03 crop Natural (sun-dried) Seedless (NS) and Zante Currant (ZC) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

**DATES:** Effective April 3, 2003. The volume regulation percentages apply to acquisitions of NS and ZC raisins from the 2002-03 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 2, 2003, will be considered prior to issuance of a final rule.