

TABLE 1—Continued

Column A variety	Column B maturity guide	(3) Any package or container of Island Prince, Snow Kist, Snow Peak or Super Rich variety peaches unless: * * * * *
King Sweet	I	(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Honey Sweet, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sun, May Sweet, Prima Peach IV, Queencrest, Rich May, Scarlet Queen, Sierra Snow, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Sunlit Snow (172LE81), Supecheight (012-094), Sweet Scarlet, Sweet Crest or Zee Diamond variety peaches unless: * * * * *
Lacey	I	
Lady Lou	L	
Lady Sue	L	
Late Ito Red	L	
Madonna Sun	J	
Magenta Queen	J	
May Crest	G	
May Sun	I	
May Sweet	I	
Merrill Gem	G	
Merrill Gemfree	G	
Morning Lord	J	
O'Henry	I	
Pacifica	G	
Pretty Lady	J	
Prima Gattie 8	L	
Prima Gattie 10	J	
Prima Peach IV	J	
Prima Peach 23	J	
Queencrest	G	
Ray Crest	G	
Red Dancer (Red Boy)	I	
Redhaven	G	
Red Lady	G	
Redtop	G	
Regina	G	
Rich Lady	J	
Rich May	H	
Rich Mike	H	
Rio Oso Gem	I	
Royal Lady	J	
Royal May	G	
Ruby May	H	
Ryan Sun	I	
September Sun	I	
Shelly	J	
Sierra Gem	J	
Sierra Lady	I	
Sparkle	I	
Sprague Last Chance	L	
Springcrest	G	
Spring Delight	G	
Spring Gem	J	
Spring Lady	H	
Springtreat (60EF32)	I	
Sugar Time (214LC68)	I	
Summer Kist	J	
Summer Lady	L	
Summerset	I	
Summer Zee	L	
Suncrest	G	
Supechfour (Amber Crest)	G	
Super Rich	H	
Sweet Amber	J	
Sweet Dream	J	
Sweet Gem	J	
Sweet Mick	J	
Sweet Scarlet	J	
Sweet September	I	
Topcrest	H	
Tra Zee	J	
Vista	J	
Willie Red	G	
Zee Diamond	J	
Zee Lady	L	

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 923**

[Docket No. FV06-923-1 IFR]

Sweet Cherries Grown in Designated Counties in Washington; Removal of Container Regulations**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This rule removes the container regulations prescribed under the Washington sweet cherry marketing order. Specifically, this rule removes the requirement that dark-colored sweet cherries must be handled in containers having a certain net weight. The marketing order regulates the handling of fresh sweet cherries grown in designated counties in the State of Washington, and is administered locally by the Washington Cherry Marketing Committee (Committee). By eliminating the container requirements, this relaxation will provide handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging. This is expected to enhance industry marketing flexibility and efficiency.

DATES: Effective April 11, 2006. Comments received by June 9, 2006 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; E-mail: moab.docketclerk@usda.gov, or Internet: <http://www.regulations.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: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204-2807; Telephone: (503) 326-2724; Fax: (503) 326-7440; or George Kelhart, Technical Advisor,

Dated: April 5, 2006.

Lloyd C Day,*Administrator, Agricultural Marketing Service.*

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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.

SUPPLEMENTARY INFORMATION: This rule is issued under 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 "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 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 removes the container regulations prescribed under the Washington sweet cherry order. Specifically, this rule removes the requirement that dark-colored sweet cherries must be handled in containers

having a certain net weight. By eliminating the container requirements, this relaxation provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging, thereby enhancing industry marketing flexibility and efficiency.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of sweet cherries grown in the production area. Section 923.52(a)(3) specifically authorizes the establishment of the container regulations found in § 923.322. Section 923.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 923.52.

Authority to regulate the size, capacity, weight, dimension, markings or pack of containers used in the handling of fresh sweet cherries was included in the order when promulgated in 1957. This authority was included in the order to facilitate container standardization and thus help establish orderly marketing conditions and increase producer returns.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of any regulatory requirements for Washington sweet cherries that are issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews the Committee recommendations along with any supportive information submitted by the Committee, as well as information from other available resources, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 28, 2006, meeting, the Committee recommended that the container regulations be entirely removed from the handling regulations. The Committee recommended that this rule be effective as early as May 1, 2006, to ensure that the earliest shipments of sweet cherries benefit from the relaxed regulations, and that container manufacturers have adequate time prior to the beginning of the shipping season to retool if new containers are ordered by the industry.

The container requirements provide the Washington cherry industry with container standardization to help ensure orderly marketing conditions and increased producer returns. Section 923.322(d) provides that: "No handler shall handle any lot of cherries, except cherries of the Rainier, Royal Anne, and

similar varieties commonly referred to as "light sweet cherries", unless such cherries are in containers which meet each of the following applicable requirements:

(1) The net weight of loose packed (jumble-filled) cherries in any container shall be 12 pounds or less, or 20 pounds or more. The net weight of face packed cherries in any container shall be 15 pounds, or 12 pounds or less: *Provided*, That containers with a net weight of 12 pounds or less may be packed together with like containers in a master shipping container.

(2) Subject to the provisions of paragraphs (b)(2)(i) and (ii) of this section, shipments of cherries may be handled in such experimental containers as have been approved by the Washington Cherry Marketing Committee."

Paragraph (2) above refers to the provisions of § 923.322(b)(2)(i) and (ii), which specify that: "(i) All shipments handled in such containers shall be under the supervision of the committee; and (ii) at least 90 percent, by count, of the cherries in any lot of such containers shall measure not less than $\frac{5}{64}$ inch in diameter, and not more than 5 percent, by count, may be less than $\frac{5}{64}$ inch in diameter." Because the provisions of (b)(2)(i) and (ii) refer to experimental containers exempt under 923.322(d)(2), this rule also removes both paragraphs from the handling regulations.

Comments made at the public meeting indicate that container standardization has contributed to orderly marketing in the past. Due to the changing dynamics in the fresh produce industry, however, buyers—at the wholesale, retail and consumer level—are seeking many more packaging options than have been available in the past. Handlers report that buyers are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. Handlers also desire greater latitude in choosing the optimum weight for a particular type of pack. Of specific concern to this industry is the ability to pack cherries in containers with net weights of between 12 and 20 pounds—a weight range specifically barred under the container regulation. Packaging options could also include consumer-friendly "clam shell" containers of any desired net weight, or other similar containers designed to enhance the appearance of individual pieces of fruit.

Although § 923.322(d)(2) provides for experimental container exemptions, those handlers who have utilized this exemption in the past feel that the process is too cumbersome and time-

consuming, thus failing to provide the optimal flexibility they need under current marketing conditions.

Regardless of the size, capacity, or type containers the industry may eventually use, the Committee believes that the Washington cherry industry desires flexibility in packaging dark-colored sweet cherries. This action will provide the industry with needed flexibility.

This rule not only removes the container regulations in § 923.322(d), but also makes necessary conforming changes by removing § 923.322(b)(2)(i) and (ii), and removing references to container requirements in § 923.322(f)(1)(ii) and § 923.322(g).

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 rule 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.

There are approximately 1,500 cherry producers within the regulated production area and approximately 53 regulated handlers. 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 \$6,000,000.

For the 2005 shipping season, the Washington Agricultural Statistics Service has prepared a preliminary report showing that the total 113,000 ton fresh market sweet cherry utilization sold for an average of \$2,830 per ton. Based on the number of producers in the production area, the average producer revenue from the sale of sweet cherries in 2005 is estimated at approximately \$213,200 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than \$6,000,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

At its February 28, 2006, meeting the Committee recommended that the container regulations in § 923.322(d) be removed from the order's rules and regulations. Section 923.52(a)(3) of the order specifically authorizes the establishment of container regulations. Further, § 923.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 923.52. This relaxation in the regulations provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging, thus enhancing industry marketing flexibility and efficiency.

The Committee anticipates that this rule will not negatively impact small businesses. This rule removes the container requirements found under § 923.322(d) of the order's rules and regulations, and, thus, should provide the industry with greater marketing opportunities. The Committee believes that any additional costs this rule may have on the industry would be associated with the development and use of new containers. Such costs would likely be offset by new marketing opportunities.

The Committee discussed alternatives to its recommendation to remove the container regulations. The Committee explored the option of leaving the container regulations intact without change. This option was rejected as being an inadequate response to the demand for greater flexibility in the packaging of fresh cherries. Temporary suspension of the regulations was considered, and then discarded, as also being inadequate for the current marketing situation.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

The Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the

meeting and participate in Committee deliberations. Like all Committee meetings, the February 28, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

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.

This rule invites comments on removal of the container regulations under the Washington cherry marketing order. 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 the regulation removed by this action no longer tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the 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) This rule removes the container regulations for Washington sweet cherries for the 2006 shipping season and subsequent seasons; (2) this rule should be in effect by May 15, 2006, the date 2006 season shipments of the Washington sweet cherry crop are expected to begin, and this action should apply to the entire season's shipments; (3) the removal of the container regulations was recommended by the Committee at a public meeting and all interested persons had an opportunity to express their views and provide input; (4) Washington cherry handlers are aware of this recommendation and need no additional time to comply with the relaxed requirements; 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.

§ 923.322 [Amended]

- 2. Section 923.322 is amended by:
 - a. Removing paragraphs (b)(2)(i) and (b)(2)(ii);
 - b. Removing and reserving paragraph (d);
 - c. Removing the word “container” from paragraph (f)(1)(ii); and
 - d. Removing paragraph designation “(d)” in paragraph (g).

Dated: April 5, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AH49

Percentages for Direct and Counter-Cyclical Program Advance Payments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of the Agricultural Reconciliation Act of 2005 regarding percentages used to determine payment amounts for producers electing to receive advance payments through the Direct and Counter-Cyclical Program. Reducing the direct payment advance percentages shifts payments between fiscal years, but will have no impact on total payments.

DATES: Effective Date: This rule becomes effective on April 10, 2006.

FOR FURTHER INFORMATION CONTACT:

Tracey Smith, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250–0517. Telephone: (202) 720–4365. Electronic mail: Tracey.Smith@wdc.usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The Direct and Counter-Cyclical Program (DCP), authorized by Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, May 13, 2002) (“2002 Act”), provides payments to eligible producers on farms enrolled for the 2002 through 2007 crop years. There are two types of DCP payments—direct payments and counter-cyclical payments. These payments provide income support to producers of eligible commodities and are based on historically-based acreage and yields and do not depend on the current production choices of the farmer. DCP replaces the Production Flexibility Contract (PFC) payments made under the Federal Agriculture Improvement and Reform Act of 1996 for the crop years 1996 through 2002. In addition to the commodities that were eligible for PFC payments, the 2002 Act also provides for direct and counter-cyclical payments for peanuts, soybeans, sunflower seed and other oilseeds.

Explanation of Change

This rule implements section 1102 of Title I of Subtitle A of the Deficit Reduction Act of 2005 (Pub. L. 109–171, February 8, 2006). This section provides that DCP advance direct payment percentages will be reduced for fiscal years 2006 and 2007 from 50 percent to 40 percent for the 2006 fiscal year, and to 22 percent for the 2007 program year. This rule amends the direct and counter-cyclical program regulations at 7 CFR 1412.502(b) to reduce the advance direct payment rate percentages accordingly. Producers will continue to have the option to receive advance direct payments during any month from December through September of the applicable fiscal year.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7991(c)), provides that the regulations needed to implement Title I of the 2002 Act (7 U.S.C. 7901 *et seq.*), including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 relating to notices of proposed rulemaking and public participating in rulemaking.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be economically significant and was reviewed by the Office of Management and Budget. The

economic effects of this rule are summarized below.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is administrative in nature and no extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule will preempt State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act (7 U.S.C. 7991(c)) provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code