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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV02-923-1 FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule allowing the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order which 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 could reduce costs. This rule was recommended unanimously by the Committee, the agency responsible for local administration of the order.

EFFECTIVE DATE: July 23, 2003.

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.

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 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 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.

Minimum grade, size, maturity, container, pack and inspection requirements are currently established under the order. This rule continues in effect 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 Mountain 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 grower 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 as well as the name, address, phone number, and signature of the applicant, and such other information as the Committee may require. The form includes a certification that all production area 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, and 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.

Final 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 final 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 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 growers 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 grower price for sweet cherries in Washington State for the last three years is \$1,943 per ton. The Committee currently estimates that there are 1,500 sweet cherry growers. Using the Committee's 1,500 sweet cherry grower estimate, the average annual grower 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 growers and handlers may be classified as small entities. Also, it is estimated that 6 packing facilities or receivers 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 continues to 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 or 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 this 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 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 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. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements on these two Committee forms was approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0214 on March 31, 2003.

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, as noted in the initial regulatory flexibility analysis, 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.

An interim final rule concerning this action was published in the **Federal Register** on April 2, 2003 (68 FR 15923). Copies of this rule were mailed by the Committee staff to all Committee members. In addition, the rule was made available through the Internet by the Office of the Federal Register and the USDA. That rule provided for a 60-day comment period that ended June 2, 2003. 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 Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 15923, April 2, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 923 that was published at 68 FR 15923 on April 2, 2003, is adopted as a final rule without change.

Dated: June 17, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03-15739 Filed 6-20-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03-959-2 FIR]

Onions Grown in South Texas; Revision of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with a minor change, an interim final rule that eliminated all container requirements from the handling regulations prescribed under the South Texas onion marketing order (order) and made several conforming and formatting changes. The order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule continues in effect the elimination of all container requirements from the handling regulations and several conforming changes. This action continues to provide the industry expanded flexibility to use any and all types and sizes of containers, or to ship onions in bulk. It also is expected to continue helping handlers compete more effectively in the marketplace, better meet buyers' needs, and help improve producer returns during the 2003 and future seasons.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; 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.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, 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