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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 923**

**[Doc. No. AMS-FV-12-0026; FV12-923-1 FIR]**

**Sweet Cherries Grown in Designated Counties in Washington;  
Decreased Assessment Rate**

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2012-2013 and subsequent fiscal periods from \$0.40 to \$0.18 per ton of sweet cherries handled. The Committee locally administers the marketing order for sweet cherries grown in designated counties in Washington. The interim rule was necessary to allow the Committee to reduce its monetary reserve.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS,

USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;  
or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutney@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 923, 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.

Under the order, Washington sweet cherry handlers are subject to assessments, which provide funds to administer

the order. Assessment rates issued under the order are intended to be applicable to all assessable Washington sweet cherries for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1, and ends on March 31.

In an interim rule published in the **Federal Register** on December 6, 2012, and effective on December 7, 2012 (77 FR 72683, Doc. No. AMS-FV-12-0026, FV12-923-1 IR), § 923.236 was amended by decreasing the assessment rate established for Washington sweet cherries for the 2012-2013 and subsequent fiscal periods from \$0.40 to \$0.18 per ton of sweet cherries handled. The decrease in the per ton assessment rate allows the Committee to reduce its monetary reserve.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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.

There are 53 handlers of Washington sweet cherries subject to regulation under the order and approximately 1,500 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

The National Agricultural Statistics Service prepared a preliminary report for the 2011 shipping season showing that the sweet cherry fresh market utilization of 165,000 tons sold for an average of \$2,300 per ton. Based on the number of producers in the production area (1,500), the average producer revenue from the sale of sweet cherries in 2011 can therefore be estimated at approximately \$253,000 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than \$7,500,000 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.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012-2013 and subsequent fiscal periods from \$0.40 to \$0.18 per ton of sweet cherries. The Committee also unanimously recommended 2012-2013 expenditures of \$64,400. The assessment rate of \$0.18 is \$0.22 lower than the rate previously in effect. The quantity of assessable sweet cherries for the 2012-2013 fiscal period is estimated at 120,000 tons. Thus, the \$0.18 rate should provide \$21,600 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. This action will allow the Committee to reduce its monetary reserve.

This rule continues in effect the action that decreased 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 Committee's meeting was widely publicized throughout the Washington 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 15, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington sweet 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.

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

Comments on the interim rule were required to be received on or before February 4, 2013. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0026-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (77 FR 72683, December 6, 2012) 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 rule amending 7 CFR part 923, which was published at 77 FR 72683 on December 6, 2012, is adopted as a final rule, without change.

Dated: April 5, 2013

David R. Shipman  
Administrator  
Agricultural Marketing Service

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