

26, September 13, November 9 and November 30, 2004. Finally, interested persons were 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 the following Web site: <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 matters presented, the information and recommendations submitted by the committees, the comment received, and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register**, (70 FR 16383, March 31, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 70 FR 16383 on March 31, 2005, is adopted as a final rule with the following changes:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.356 [Amended]

■ 2. Section 916.356 is amended by:

■ A. Removing the words “Spring Ray” from column A and the entry “L” from column B and adding in alphabetical order the words “Burnectone (Spring Ray)” in column A and an entry “L” in column B of Table 1 in paragraph(a)(1)(iv);

■ B. Removing the words “Spring Ray” and adding the words “Burnectone (Spring Ray)” in alphabetical order in the introductory text of paragraph (a)(4).

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.459 [Amended]

■ 3. Section 917.459 is amended by removing the word “012–094” and adding the words “Supeacheight (012–094)” in alphabetical order in the introductory text of paragraph (a)(5).

* * * * *

Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15168 Filed 8–1–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. AO–F&V–923–3; FV03–923–01 FR]

Sweet Cherries Grown in Designated Counties in Washington; Order Amending Marketing Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the marketing order (order) for sweet cherries grown in Washington. Sweet cherry growers, voting in a mail referendum held March 1 through March 21, 2005, voted on four amendments proposed by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order, and two amendments proposed by the Agricultural Marketing Service of USDA. Of the six amendments proposed, three were favored, including: Adding authority for the Committee to accept voluntary contributions for research and promotion; establishing tenure limitations for Committee members; and requiring that continuance referenda be conducted every 6 years. The three amendments that failed include: adding authority for promotion, including paid advertising, and production research projects; adding authority for supplemental rates of assessment for individual varieties of cherries; and, adding a public member to the Committee. These amendments will not be implemented.

EFFECTIVE DATE: This rule is effective August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order

Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Robert J. Curry, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW., Third Avenue, Room 385, Portland, OR 97204; telephone (503) 326–2724 or Fax (503) 326–7440.

Small businesses may request information on this proceeding 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: Prior documents in this proceeding include: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58636); Recommended Decision issued on September 29, 2004 and published in the October 5, 2004 issue of the **Federal Register** (69 FR 59551); and a Secretary's Decision and Referendum Order issued January 11, 2005 and published in the **Federal Register** on January 14, 2005 (70 FR 2573).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held November 18, 2003, in Yakima, Washington. Notice of the public hearing was issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58636). The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 923, regulating the handling of sweet cherries grown in the State of Washington, hereinafter referred to as the “order”. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained six proposals: four proposals submitted by the Committee and two proposals by the

Agricultural Marketing Committee (AMS).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on September 29, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 4, 2004. No comments or exceptions were filed.

A Secretary's Decision and Referendum Order was issued on January 11, 2005, directing that a referendum be conducted during the period March 1 through March 25, 2005, among growers of sweet cherries to determine whether they favored the proposed amendments to the order. Voters voting in the referendum favored three out of the six amendments proposed by the Committee and USDA.

The amendments favored by the voters and included in this order will:

1. Add authority for the Committee to accept voluntary contributions for production research, marketing research and promotion. Any voluntary contributions received under this new authority may be used to support marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption of sweet cherries. Voluntary contributions may not, however, be used for production research or paid advertising, as the authority to conduct such activities under the order was not approved in the referendum.

2. Impose term limitations on Committee members. Upon implementation, Committee members will be limited to serving no more than three consecutive two-year terms in one position without a break in service.

3. Require that continuance referenda be held every 6 years among Washington sweet cherry producers to determine their support for continuation of their marketing order program.

The proposals to add authority for production research and paid advertising, additional rates of assessments for individual varieties of cherries and a public member to the committee, failed to obtain the requisite number of votes needed, in number or in volume, to pass.

To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of sweet cherries represented by voters voting in the referendum.

AMS also proposed to allow such changes as may be necessary to the

order so that all of the order's provisions conform to the effectuated amendments. None were deemed necessary.

Small Business Considerations

Pursuant to the 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, the 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 so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms are defined as those with annual receipts of less than \$6,000,000.

The record shows that there are approximately 1,500 growers of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The average production of sweet cherries in Washington State for the last three years is 64,676 tons with an average grower price of \$1,943 per ton. Using this number, the average annual grower revenue is calculated to be approximately \$83,777, thus indicating that the average Washington sweet cherry grower would qualify as a small entity according to the SBA definition.

Using Committee data regarding each individual handler's total shipments during the 2002 marketing year, and an estimated average FOB price of \$24 per 20-pound container, 79 percent of the Washington sweet cherry handlers shipped under \$5 million worth of sweet cherries, and 21 percent shipped over \$5 million worth of sweet cherries. Therefore, the majority of Washington sweet cherry handlers may be classified as small entities.

At a May 22, 2003, full Committee meeting, all industry representatives present could present their views concerning the recommended amendments. Both large and small businesses were represented. The Committee believes that small and large entities will benefit equally from the amendments.

This final rule amends § 923.43 of the order to authorize acceptance of voluntary contributions. The proposal to add authority for the Committee to accept voluntary contributions will not result in any increased costs or burdens to the industry. In fact, witnesses stated that this authority will benefit the industry greatly as it could provide for

additional funding sources for research activities. Safeguards against donor control over the use of voluntary contributions will ensure that these funds will be used in the best interest of the industry. The Committee will decide how to use those funds, and the decision-making process will be open to industry input and feedback.

This final rule amends § 923.21 of the order to authorize term limits. The amendment to add tenure requirements for Committee members will allow more persons the opportunity to serve as members of the Committee. It will provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

This final rule amends § 923.64 of the order to authorize continuance referenda. The amendment to require continuance referenda on a periodic basis to ascertain grower support for the order will allow growers to vote on whether to continue the operation of the program. The referenda will be conducted by USDA.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs are expected to be outweighed by the benefits expected to accrue to the sweet cherry industry in designated counties of Washington.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), any reporting and recordkeeping provision changes that would be generated by these amendments would be submitted to the Office of Management and Budget (OMB). Current information collection requirements for Part 923 are approved by OMB under the generic Fruit Crops package OMB number 0581-0189.

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 proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the

Washington sweet cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. These amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 Department 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 there from. 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 Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating Sweet Cherries Grown in Washington

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 923 (7 CFR part

923), regulating the handling of sweet cherries grown in Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of sweet cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet cherries grown in the production area; and

(5) All handling of sweet cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the amendments to this order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the approved changes, which are expected to benefit the Washington sweet cherry industry. Immediate implementation of the amendments is necessary in order to make the amendments effective as specified.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping sweet cherries covered by the order as hereby amended) who, during the period April 1, 2004, through February 28, 2005, handled 50 percent or more of the volume of such sweet cherries covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of April 1, 2004, through February 28, 2005 (which has been deemed to be a representative period), have been engaged within the production area in the production of such sweet cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of sweet cherries in the production area.

Order Relative To Handling of Sweet Cherries Grown in Washington

It is therefore ordered, that on and after the effective date hereof, all handling of sweet cherries grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of proposals 3, 5 and 6 of the proposed order amending the order contained in the Recommended Decision issued by the Administrator on September 29, 2004, and published in the **Federal Register** on October 5, 2004, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set out 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 923.21 is revised to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

■ 3. A new § 923.43 is added to read as follows:

§ 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

■ 4. Section 923.64 is amended by:

- A. Revising paragraph (c).
- B. Redesignating paragraph (d) as paragraph (e).
- C. Adding a new paragraph (d).

The revisions read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of growers who, during a representative period, have been engaged in the production of cherries: *Provided*, that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by growers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

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Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-15169 Filed 8-1-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV05-946-2 FR]

Irish Potatoes Grown in Washington; Modification of Special Purpose Shipment Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies the special purpose shipment regulations currently prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule modifies the reporting requirements, procedures, and safeguard provisions for making certain special purpose potato shipments. Under the marketing order, such special purpose shipments may be exempted from the quality, assessment, or inspection requirements. The changes include removal of the special purpose exemption for exported potatoes, clarification of the reporting procedures for potatoes diverted to processing, and addition of safeguard provisions for shipments of seed potatoes and shipments to charitable organizations. These changes will help facilitate special purpose shipments, while enhancing the Committee's compliance program.

DATES: This final rule becomes effective August 3, 2005.

FOR FURTHER INFORMATION CONTACT:

Teresa 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 final rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown 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 final 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.

This final rule modifies the special purpose shipment regulations prescribed under the order. This rule modifies the reporting requirements, procedures, and safeguard provisions for making certain special purpose potato shipments. Under the marketing order, such special purpose shipments may be exempt from the quality, assessment, or inspection requirements. The modifications were recommended unanimously by the Committee at a meeting on February 3, 2005.