

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 923

[Doc. No. AMS-FV-13-0055; FV13-923-1 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 2013–2014 and subsequent fiscal periods from \$0.18 to \$0.15 per ton of sweet cherries handled. The Committee locally administers the marketing order for sweet cherries grown in designated counties in Washington. The Committee's fiscal period begins on April 1, and ends March 31. The interim rule was necessary to allow the Committee to reduce its monetary reserve while still providing adequate funding to meet program expenses.

**DATES:** Effective December 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: [Teresa.Hutchinson@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto: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 Web site: <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 Email: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@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 Orders 12866 and 13563.

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 March 31.

In an interim rule published in the **Federal Register** on August 8, 2013, and effective on August 9, 2013, (78 FR 48283, Doc. No. AMS-FV-13-0055, FV13-923-1 IR), § 923.236 was amended by decreasing the assessment rate established for the Committee for the 2013–2014 and subsequent fiscal periods from \$0.18 to \$0.15 per ton of sweet cherries handled. The Committee recommended the lower assessment rate for the purpose of reducing its monetary reserve while still providing adequate funding to meet program expenses.

#### 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

businesses 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 has prepared a preliminary report for the 2012 shipping season showing that prices for the 210,000 tons of sweet cherries that entered the fresh market averaged \$2,140 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 2012 can therefore be estimated at approximately \$299,600 per year. In addition, the Committee reports that most of the industry's 53 handlers reported gross receipts of less than \$7,000,000 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.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2013–2014 and subsequent fiscal periods from \$0.18 to \$0.15 per ton of sweet cherries. The Committee also unanimously recommended 2013–2014 fiscal period expenditures of \$65,900. The quantity of assessable sweet cherries for the 2013–2014 fiscal period is estimated by the Committee to be 160,000 tons. Thus, the \$0.15 per ton rate should provide \$24,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The Committee recommended the assessment rate decrease to reduce its monetary reserve to a level that is less than approximately

one fiscal period's operating expenses, the maximum permitted by the order.

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. All interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 21, 2013, meeting was a public meeting and all entities, both large and small, were able to express their 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 October 7, 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-13-0055-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); 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** (78 FR 48283, August 8, 2013) 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 78 FR 48283 on August 8, 2013, is adopted as a final rule, without change.

Dated: December 9, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013-29674 Filed 12-13-13; 8:45 am]

**BILLING CODE P**

### FEDERAL ELECTION COMMISSION

#### 11 CFR Part 100

[Notice 2013-16]

#### Date of Political Party Nominations of Candidates for Special Primary Elections in New York

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of interpretive rule.

**SUMMARY:** The Federal Election Commission is clarifying its interpretation of its rules for determining the date of a special primary election as those rules apply to nominations conducted under New York statutes that provide for a candidate to be nominated for a special election by a vote of a state or county party committee.

**DATES:** December 16, 2013.

**FOR MORE INFORMATION CONTACT:** Robert M. Knop, Assistant General Counsel, or Cheryl A.F. Hemsley, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** This Notice clarifies that, for purposes of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, the date of a special primary election under New York law is the date on which the political party committee votes to nominate the party's candidate for the special general election, not the date on which the certification of that vote is filed. Because the Act and Commission regulations provide for separate contribution limits for each "election,"<sup>1</sup> the Commission issues this clarification

<sup>1</sup> See 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(b)(1), 110.2(b)(1).

to assist candidates and their authorized committees in distinguishing contributions for special primary elections in New York from contributions for special general elections.

The Act provides that an "election" includes "a general, special, primary, or runoff election . . . [or] a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(1)(A), (B). Commission regulations define a "primary election" as an "election which is held prior to a general election, as a direct result of which candidates are nominated, in accordance with applicable State law, for election to Federal office in a subsequent election." 11 CFR 100.2(c)(1).<sup>2</sup> A "special election" is an election to fill a vacancy in a Federal office and may be a primary, general, or runoff election. 11 CFR 100.2(f). Under the Act and Commission regulations, therefore, a special primary election is an election, convention, or caucus with the authority to nominate candidates in accordance with applicable state law for a subsequent general election that is held to fill a vacancy in a Federal office.

New York election law generally provides that "[p]arty nominations for an office to be filled at a special election shall be made in the manner prescribed by the rules of the party." N.Y. Elec. Law 6-114. New York Democratic and Republican State party committee rules provide that the county committees within a vacant congressional district nominate candidates for a special election to the U.S. House of Representatives; and that the state committees nominate candidates for a special election to the U.S. Senate. See Party Rules New York State Democratic Committee, Art. VI, Sec. 2 (2012); and Rules of the New York Republican State Committee, Art. VII, Rule 1 (June 9, 2011). Similarly, when a vacancy in an elected office occurs too late for candidates to participate in a regularly scheduled primary, New York election law requires a party to nominate its candidate by a vote of the appropriate state or county party committee. See N.Y. Elec. Law 6-116. After a party committee votes to nominate a candidate, a "certificate of nomination shall be filed" with the appropriate election board certifying the committee's vote. *Id.*; see also *id.* 6-144,

<sup>2</sup> Because the date of a special primary election for an independent or minor-party candidate is governed by different regulatory criteria, see 11 CFR 100.2(c)(4), this Notice encompasses only nominations by a major political party, which is a party whose candidate for President received at least 25 percent of the popular vote in the preceding presidential election. 26 U.S.C. 9002(6).