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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. AMS-FV-07-0018; FV07-923-610 Review]

Sweet Cherries Grown in Designated Counties in Washington; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 923, regulating the handling of sweet cherries grown in designated counties in Washington. AMS has determined that the marketing order should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should 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; or E-mail: moab.docketclerk@usda.gov. A copy of the review may also be obtained via the Internet at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Robert Curry or Gary D. Olson, 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 E-mail: Robert.Curry@usda.gov or GaryD.Olson@usda.gov.

SUPPLEMENTARY INFORMATION: Marketing Order No. 923, as amended (7 CFR part 923), regulates the handling of sweet cherries grown in designated counties in Washington State 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 order establishes the Washington Cherry Marketing Committee (Committee) which is comprised of sixteen members and sixteen alternate members selected by the Department of Agriculture (USDA). Ten of the members and their respective alternates are growers of sweet cherries and six of the members and their respective alternates are handlers. As the industry is divided into two districts, five growers and three handlers and their respective alternates from each district are represented on the Committee. Committee members and alternate members serve for two years beginning on April 1 and ending on March 31. The terms are staggered so that half of the members are selected annually. Committee members may serve for a maximum of three consecutive two-year terms.

The Committee is responsible for local administration of the order, including recommending the implementation of regulatory actions and activities to USDA, collecting and distributing industry statistics, and ensuring compliance with the various provisions of the order. The Committee recommends amendments to the order when needed to further industry objectives. Activities of the Committee are funded by assessments collected from handlers on a per ton basis for all production area cherries sold into the fresh market. USDA must approve recommendations by the Committee before they can be implemented.

Currently, there are approximately 1,500 growers and 53 handlers of Washington sweet cherries in the regulated production area. The majority of these growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly to small and large entities, and are designed to benefit all industry entities regardless of size.

A plan to review certain regulations—including Marketing Order No. 923—

was published in the **Federal Register** on February 18, 1999 (64 FR 8014), under criteria contained in section 610 of the RFA (5 U.S.C. 601-612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the Washington sweet cherry marketing order in the June 20, 2007, issue of the **Federal Register** (72 FR 33918). The deadline for comments ended August 20, 2007. Two comments were received via the [regulations.gov](http://www.regulations.gov) Web site. Both comments were not related to the Washington sweet cherry marketing order nor the published request for comments specific to the section 610 review, and thus were not considered.

The review was undertaken to determine whether the order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes the issuance of regulations to limit the shipment of any particular grade, size, quality, maturity or pack of sweet cherries grown in the production area. Regulations may also be issued that fix the size, capacity, weight, dimensions, markings, or pack of the containers used in the packaging or handling of cherries. The order also authorizes the Committee to establish marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of cherries. Finally, the order authorizes collection and dissemination of information for the benefit of the industry.

Current handling regulations issued under the order's authority include minimum grade, size, maturity and pack

regulations, as well as mandatory inspection of the product to ensure that it meets these minimum requirements. These regulations have helped ensure that quality product reaches the consumer, and have thus helped increase and maintain demand for Washington sweet cherries over the past five decades. The compilation and dissemination of statistical information undertaken by the Committee has helped producers and handlers make production and marketing decisions. Funds to administer the order are obtained from assessments levied against all product handled under the order.

Regarding complaints or comments received from the public concerning the order, AMS did not receive any complaints or comments specific to the order in response to the notice of review and request for comments published on June 20, 2007 (72 FR 33918).

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. Except as discussed herein, AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order. There is a Washington State commission covering specified tree fruits, including sweet cherries. However, this program—the Washington State Fruit Commission (Commission)—is market-oriented and none of its programs are duplicated by the Federal order. Among other activities, the Commission currently conducts marketing research and development projects, which are authorized—but not currently conducted—under the Federal order.

The order was established in June 1957. During the 50 years the order has been in effect, AMS and the Washington sweet cherry industry have continuously monitored its operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to assure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets once or twice a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In addition, in 2001, and again in 2005, the Committee made several recommendations to improve quality regulations and program operations through two separate formal amendments of the order. These formal amendment proceedings resulted in several changes being made to the order, including: Increasing the size of the production area to include all of Washington State east of the Cascade Mountain Range; allowing grading and packing of Washington cherries outside the production area; increasing Committee representation by adding a handler member; providing for late payment and interest charges on delinquent assessments; authorizing the establishment of container marking requirements; adding authority for the Committee to accept voluntary contributions for research and promotion; establishing tenure requirements for Committee members; and adding a requirement that continuance referenda be held every 6 years.

Based on the potential benefits of the order to producers, handlers, and consumers, AMS has determined that the Washington sweet cherry marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The order's regulations on grade, size, quality, maturity, and pack continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the Washington sweet cherry industry in maintaining an effective marketing order program.

Dated: December 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1281]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board is revising the official staff commentary to Regulation B, which implements the Equal Credit Opportunity Act, to clarify an amendment published on November 9, 2007. The clarification and the earlier amendment relate to the electronic delivery of disclosures under Regulation B.

DATES: The amendment is effective January 14, 2008. The mandatory compliance date is October 1, 2008.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the ECOA. The ECOA and Regulation B require certain disclosures to be provided to applicants, and some of those disclosures must be provided in writing.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000. The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

Recently the Board published amendments to Regulation B and the official staff commentary to the regulation to provide guidance on the use of electronic disclosures, consistent