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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 923

[Docket No. FV06-923-2 IFR]

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

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2006-2007 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order regulating the handling of sweet cherries grown in designated counties in Washington. Specifically, this rule decreases the assessment rate from \$0.75 to \$0.50 per ton for Washington sweet cherries handled under the marketing order. Authorization to assess cherry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period for the marketing order begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Effective June 20, 2006. Comments received by August 18, 2006, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this rule. Comments must 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; E-mail:

*moab.docketclerk@usda.gov*; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440.

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 SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 923 (7 CFR 923), as amended, 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. Under the marketing order now in effect, cherry handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington sweet cherries beginning April 1, 2006, and continue until amended, suspended, or terminated. 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. Such 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 rule decreases the assessment rate established for the Committee for the 2006-2007 and subsequent fiscal periods from \$0.75 to \$0.50 per ton for Washington sweet cherries handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of sweet cherries in designated counties in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004-2005 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of \$0.75 per ton of sweet cherries handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 3, 2006, and unanimously recommended 2006-2007 expenditures of \$49,800 and a decreased assessment rate of \$0.50 per ton of cherries. In comparison, last year's budgeted expenditures were \$72,297. The assessment rate of \$0.50 is \$0.25 lower than the rate previously in

effect. Due to an anticipated decrease in operating expenses this year, the Committee recommended the assessment rate decrease to maintain the level of income near the level of expenses.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington sweet cherries. Applying the \$0.50 per ton rate of assessment to the Committee's 110,000 ton crop estimate should provide \$55,000 in assessment income. Thus, income derived from handler assessments will be adequate to cover the recommended 2006–2007 budget of \$49,800.

The Committee's budget of expenditures for the 2006–2007 period reflect a significant reduction in overall cost from previous years. This occurred, in part, because the Committee hired an outside management services agency to more efficiently handle the Committee's administrative matters. Major expenses recommended by the Committee for the 2006–2007 year include administration and data management fees totaling \$25,000, Committee expenses of \$16,200 (which includes travel, accounting and compliance), and office expenses—including bonds, insurance, telephone, office equipment and supplies—of \$7,100.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Initial 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 rule on small entities. Accordingly, AMS has prepared this initial 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.

There are approximately 1,500 cherry producers within the regulated production area and approximately 53 regulated handlers. Small agricultural producers are defined by the Small Business Administration (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 \$6,500,000.

For the 2005 shipping season, the Washington Agricultural Statistics Service has prepared a preliminary report showing that the total 113,000 ton fresh market sweet cherry utilization sold for an average of \$2,830 per ton. Based on the number of producers in the production area, the average producer revenue from the sale of sweet cherries in 2005 is estimated at approximately \$213,200 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than \$6,500,000 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 decreases the assessment rate established for the Committee and collected from handlers for the 2006–2007 and subsequent fiscal periods from \$0.75 to \$0.50 per ton for sweet cherries. The Committee unanimously recommended 2006–2007 expenditures of \$49,800. With the 2006–2007 crop estimate of 110,000 tons for sweet cherries, the Committee anticipates assessment income of \$55,000.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because of the uncertainty of the crop size estimate.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2006–2007 season could average about \$2,830 per

ton for fresh Washington sweet cherries. Therefore, the estimated assessment revenue for the 2006–2007 fiscal period as a percentage of total producer revenue is 0.018 percent for Washington sweet cherries.

This action decreases 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 and participate in Committee deliberations on all issues. Like all Committee meetings, the May 3, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order 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 information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to

give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2006–2007 fiscal period began on April 1, 2006, and the order requires that the rate of assessment apply to all assessable Washington sweet cherries handled during such fiscal period; (2) this action decreases the assessment rate for the 2006–2007 and subsequent fiscal periods; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth 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 923.236 is revised to read as follows:

##### § 923.236 Assessment rate.

On or after April 1, 2006, an assessment rate of \$0.50 per ton is established for the Washington Cherry Marketing Committee.

Dated: June 12, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–9598 Filed 6–16–06; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1216

[Docket No. FV–05–701–FR]

#### Amendment to the Peanut Promotion, Research, and Information Order

**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 to bring the sections of the Peanut Promotion, Research and Information Order (Order), into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments. This order is issued under the authority of the Commodity Promotion, Research and Information Act of 1996. This rule continues in effect changes to the Order provisions on assessments and the deletion of a number of obsolete definitions.

**DATES:** Effective July 19, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Deborah S. Simmons, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915 or fax (202) 205–2800.

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Peanut Promotion, Research and Information Order (7 CFR part 1216) as amended, to bring the provisions of the Peanut Promotion, Research and Information Order, into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments, and deletion of a number of obsolete definitions, hereinafter referred to as the “Order.” The Order is effective under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7401–7425), hereinafter referred to as the “Act.”

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any State or local laws authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner

will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary’s final ruling.

This rule continues in effect changes to the Order to bring the provisions of the Peanut Promotion, Research and Information Order, into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments. This order is issued under the authority of the Commodity Promotion, Research and Information Act of 1996. This rule also continues in effect changes to the Order for the deletion of a number of obsolete definitions.

#### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 13,000 producers and 57 first handlers of peanuts subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than \$6 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000 annually.

A number of changes have occurred to Farm Service Agency loan programs for peanuts since the 2002 Farm Bill. In view of this, and taking into account alternatives, several provisions of the Order needed to be updated. This final rule modifies Section 1216.51 of the Order which deals with the collection process for assessments including peanuts placed under marketing assistance loans. For loan peanuts, the