

Anticipated 2008–09 expenses (\$76,492), minus the difference between the 2008 beginning reserve (\$62,647) and the desired 2009 ending reserve (\$54,311), divided by the total estimated 2008–09 shipments (1,944,444 9-kilo volume-fill containers). This formula results in the assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent. As mentioned earlier, kiwifruit shipments for the year are estimated at 1,944,444 9-kilo volume-fill containers which should provide \$68,056 in assessment income. An additional \$100 in penalty and interest income is also anticipated, bringing the total projected 2008–09 revenue to \$68,156. Income generated through this rate, plus interest income and reserve funds, will provide sufficient funds to meet the anticipated expenses of \$76,492 and should result in a July 2009 ending reserve of \$54,311 which is within the maximum reserve of approximately one fiscal year's expenses permitted by the order (§ 920.42).

According to NASS, the season average grower price for years 2006 and 2007 were \$911 and \$950 per ton, respectively. These prices provide a range within which the 2008–09 season average grower price could fall. Dividing these average grower prices by 2,000 pounds per ton provides a price per pound range of \$0.46 to \$0.48. Multiplying these per-pound prices by 19.8 pounds (the weight of a 9-kilo volume-fill container) yields a 2008–09 price range estimate of \$9.11 to \$9.50 per 9-kilo volume-fill container of assessable kiwifruit.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.035 per 9-kilo volume-fill container is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 fiscal year as a percentage of total grower revenue would thus likely range between 0.368 and 0.384 percent.

This action 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 California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2008, meeting was a public meeting and

all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit 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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

An interim final rule concerning this action was published in the **Federal Register** on December 12, 2008 (73 FR 75537). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on February 10, 2009, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 920, which was published at 73 FR 75537 on December

12, 2008, is adopted as a final rule without change.

Dated: March 18, 2009.

**Craig Morris**,

*Acting Associate Administrator.*

[FR Doc. E9–6249 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. AMS–FV–08–0066; FV08–930–2 FIR]

#### Tart Cherries Grown in the States of Michigan, et al.; Change to Fiscal Period

**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 changing the fiscal period prescribed under the tart cherry marketing order (order). The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). This rule continues in effect an action that changed the fiscal period from July 1 through June 30 to October 1 through September 30. This will improve the administration and the fiscal operation of the Board.

**DATES:** Effective date April 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737, *telephone:* (301) 734–5243; *Fax:* (301) 734–5275 or e-mail at [Patricia.Petrella@usda.gov](mailto:Patricia.Petrella@usda.gov) or [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 930 (7 CFR part 930) (order) regulating the handling of tart cherries grown in the States of Michigan, New York,

Pennsylvania, Oregon, Utah, Washington, and Wisconsin. 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.”

USDA is issuing this rule in conformance with Executive Order 12866. This 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 rule continues in effect an action that changed the fiscal period from July 1 through June 30 to October 1 through September 30. This action was unanimously recommended by the Cherry Industry Administrative Board (Board) at its June 19, 2008 meeting.

Section 930.7 of the order currently defines fiscal period as the 12-month period beginning on July 1 of any year and ending on June 30 of the following year or such other period as the Board, with approval of the Secretary, may establish.

According to the Board, the July through June fiscal period is inconsistent with needs of the industry, the Board’s changed activities, and its cash flow.

The Board’s and industry’s activities have changed since the order’s inception. Initially, the Board’s activities consisted primarily of the administrative duties associated with the marketing order, and relatively moderate expenditures were incurred for that purpose. The Board and industry’s focus has recently changed to include promotional activities, and annual expenditures have increased significantly. The majority of the

Board’s expenditures are now used on promotional activities. Changing the Board’s fiscal period allows the Board to better coordinate with its promotion activities and to make its fiscal cycle consistent with its major program expenditures.

In addition, changing the fiscal period brings the Board’s collection of assessment revenues into line with program expenses. Handler assessments, which fund program expenses, are collected in October. This changed fiscal period thus enables the Board to receive its funding at the beginning of its fiscal period so the revenue to fund program expenses is available when needed. The Board believes it can increase its operational efficiency by making its fiscal period consistent with its promotional activities. An October through September fiscal period also brings revenue collection in line with funding needs of the program. Therefore, changing the fiscal period from July through June to October through September will improve the administration and fiscal operation of the Board.

#### **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 action 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 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 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (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.

A majority of the producers and handlers are considered small entities under SBA’s standards. There were 37 handlers operating during the 2007–2008 season, the last completed crop

year. Eight of these handlers, representing 20.5 percent of all handlers and 69.3 percent of production, processed more than 10 million pounds of cherries. Six handlers, representing 15.4 percent of all handlers and 16.9 percent of production, processed more than 5 million pounds and less than 10 million pounds of cherries. Seven handlers, representing 17.9 percent of all handlers and 9.6 percent of production, processed between 2.1 and 5 million pounds of cherries. The 16 remaining handlers, representing 43.2 percent of all handlers and 4.1 percent of production, processed less than 2 million pounds of cherries. Handlers accounting for 10 million pounds or more cherries would be classified as large businesses. Thus, a majority of tart cherry handlers (79.5 percent by number) could be classified as small entities.

During the 3-year period 2005–2007, production of tart cherries averaged 259 million pounds. Dividing the total production by the average number of growers, the average grower produces about 386,000 pounds of tart cherries annually. With grower returns of about 25 cents per pound, average annual revenues would be \$96,497. At 25 cents per pound, a grower would have to produce 3 million pounds of tart cherries to reach the \$750,000 receipt threshold to be classified as a large entity using the SBA definition for agricultural producers. According to Cherry Industry Administrative Board data, not more than 9 growers (1 percent of the average number of growers) produced 3 million pounds or more of tart cherries during the 2005–2007 crop years, and those growers would be classified as large. The remaining 99 percent of growers would be classified as small entities.

This rule continues in effect an action that changed the fiscal period from July 1 through June 30 to October 1 through September 30. This action is administrative in nature and will have little impact on producers or handlers. It will allow the Board to increase its operational efficiency by making its fiscal period consistent with its promotional activities. It will also bring revenue collection in line with funding needs of the program. Continuing in effect the change to the fiscal period from July through June to October through September will improve the administration and fiscal operation of the Board.

One alternative to this action would be to change the fiscal period back to July through June. However, this would not improve program administration

inconsistencies in the Board's fiscal operations.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart 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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 19 members, of which 18 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

An interim final concerning this action was published in the **Federal Register** on December 15, 2008 (73 FR 75927). Copies of the rule were mailed by the Board's staff to all Board members, producers, handlers, and other interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended February 13, 2009. No comments were received.

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 Board's recommendation, and other information, it is hereby found that this rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 930

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ Accordingly, the interim final rule amending 7 CFR 930, which was published at 73 FR 75927 on December 15, 2008, is adopted as a final rule without change.

Dated: March 18, 2009.

**Craig Morris,**

*Acting Associate Administrator.*

[FR Doc. E9-6250 Filed 3-20-09; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. APHIS-2008-0124]

#### Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the bovine tuberculosis regulations to establish two separate zones with different tuberculosis risk classifications for the State of New Mexico. The entire State of New Mexico has been classified as modified accredited advanced; however, all its affected herds are located in a small area along the State's eastern border. We have determined that New Mexico meets our requirements for zone classification. Therefore, we are removing New Mexico from the list of modified accredited advanced States, adding an area consisting of Curry and Roosevelt Counties, NM, to the list of modified accredited advanced zones, and adding the remainder of the State to the list of accredited-free zones. This action relieves restrictions on the interstate movement of cattle and bison from these areas of New Mexico outside of the modified accredited advanced zone in two counties.

**DATES:** This interim rule is effective March 23, 2009. We will consider all

comments that we receive on or before May 22, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0124> to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2008-0124, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0124.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave., Bldg. B, MSC 3E20, Ft. Collins, CO 80526; (970) 494-7378.

#### SUPPLEMENTARY INFORMATION:

#### Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal