

export in Mexico or the port of first arrival in the United States.

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Done in Washington, DC, this 20<sup>th</sup> day of May 2010.

**Kevin Shea**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010-12823 Filed 5-26-10; 8:45 am]

**BILLING CODE 3410-34-S**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Doc. No. AMS-FV-10-0029; FV10-930-2 PR]

#### **Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate for the 2010-2011 Crop Year for Tart Cherries**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Cherry Industry Administrative Board (Board) for the 2010-2011 fiscal period from \$0.0066 to \$0.0075 per pound of assessable tart cherries. The Board locally administers the marketing order which regulates the handling of tart cherries grown in Michigan, New York, Oregon, Pennsylvania, Utah, Washington, and Wisconsin. Assessments upon tart cherry handlers are used by the Board to fund reasonable and necessary expenses of the program. The 2010-2011 fiscal period year begins October 1, 2010. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by July 26, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning 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, or Internet: <http://www.regulations.gov>. All comments should reference the document 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.regulations.gov>. All comments submitted in response to this

rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734-5243, Fax: (301) 734-5275; E-mail:

[Kenneth.Johnson@ams.usda.gov](mailto:Kenneth.Johnson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 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 provisions now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tart cherries beginning October 1, 2010, and continue until amended, suspended, or terminated.

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 exempt 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 in equity 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 would increase the assessment rate established for the Board for the 2010-2011 and subsequent fiscal periods from \$0.0066 to \$0.0075 per pound of assessable tart cherries. The 2010-2011 fiscal period begins on October 1, 2010, and ends on September 30, 2011.

The tart cherry marketing order provides authority for the Board, 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 Board are producers and handlers of tart cherries. They are familiar with the Board'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 in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and for the Board to collect such assessments appears in § 930.41 of the order. That section also provides that each part of an assessment rate intended to cover administrative costs and research and promotional costs be identified. Section 930.48 of the order provides that the Board, with the approval of the USDA, may establish or provide for the establishment of production research, market research and development, and/or promotional activities designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cherries. The expense of such projects is paid from funds collected pursuant to § 930.41 (Assessments), or from such other funds as approved by the USDA.

For the 2006-2007 fiscal year, the Board recommended, and USDA approved, an assessment rate of \$0.0066 per pound of tart cherries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on January 26, 2010, and recommended 2010-2011 expenditures of \$1,665,000 and an assessment rate of \$0.0075 per pound of tart cherries. The Board's recommendation was unanimous. In comparison, last year's budgeted

expenses were \$1,558,900. The Board recommended that the assessment rate be increased to cover increases in administrative expenses. The assessment rate has not been increased in four years. The current assessment rate to cover administrative costs is \$0.0016. The proposed increase would raise the assessment rate for administrative expenses to \$0.0025. In addition, a portion of the assessment rate (\$0.005 per pound of cherries) would continue to fund the Board's research and promotion program. The total assessment rate for 2010–2011 and beyond would be \$0.0075, an increase of approximately 14 percent over the current rate of \$0.0066.

The major expenditures recommended by the Board for the 2010–2011 year include \$1,150,000 for promotion, \$213,000 for personnel, \$109,000 for compliance, \$102,000 for office expenses, \$86,000 for Board meetings, and \$5,000 for industry educational efforts. Budgeted expenses for major items in 2009–2010 were \$1,150,000 for promotion, \$175,900 for personnel, \$92,800 for Board meetings, \$44,200 for compliance, \$58,400 for office expenses, and \$2,500 for industry educational efforts.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 230 million pounds. Therefore, total assessment income for 2010–2011 is estimated at \$1,725,000 (230 million pounds x \$0.0075). This would be adequate to cover budgeted expenses. Any excess funds would be placed in the financial reserve, which is estimated to be \$267,000, well within the approximately six months' operating expenses as required by § 930.42(a).

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

Although the assessment rate would be effective for an indefinite period, the Board would 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 Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as

necessary. The Board's 2010–2011 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

#### Initial 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 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 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 approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been 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.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2008/09, approximately 96 percent of the U.S. tart cherry crop, or 244.4 million pounds, was processed annually. Of the 244.4 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 34,650 acres in 2008/09. This represents a 31 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

This rule would increase the assessment rate established for the Board for the 2010–2011 and subsequent fiscal periods from \$0.0066

to \$0.0075 per pound of assessable tart cherries. The 2010–2011 fiscal period begins on October 1, 2010, and ends on September 30, 2011.

The Board discussed continuing the existing assessment rate, but concluded that the rate needed to be increased in order to meet recommended expenses. The assessment rate has not been increased for four years.

A review of preliminary information pertaining to the upcoming fiscal period indicates that the grower price for tart cherries for the 2010–2011 season could range between \$0.15 and \$0.20 per pound. Therefore, the estimated assessment revenue for the 2010–2011 fiscal period as a percentage of total grower revenue could be or range between 3.75 and 5 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no 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.

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

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 Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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

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

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

#### **§ 930.200 Assessment rate.**

On and after October 1, 2010, the assessment rate imposed on handlers shall be \$0.0075 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is \$0.005 per pound of cherries to cover the cost of the research and promotion program and \$0.0025 per pound of cherries to cover administrative expenses.

Dated: May 19, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–12466 Filed 5–26–10; 8:45 am]

**BILLING CODE P**

#### **DEPARTMENT OF THE TREASURY**

#### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

[Notice No. 105; Docket No. TTB–2010–0003]

RIN 1513–AB41

#### **Proposed Establishment of the Pine Mountain-Mayacmas Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 4,600-acre “Pine Mountain-Mayacmas” American viticultural area in portions of Mendocino and Sonoma Counties, California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

**DATES:** We must receive written comments on or before July 26, 2010.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for this notice as posted within Docket No. TTB–2010–0003 on “Regulations.gov,” the Federal e-rulemaking portal, to submit comments via the Internet;

- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal within Docket No. TTB–2010–0003 at *http://www.regulations.gov*. A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 105. You also may view copies of this notice, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background on Viticultural Areas**

##### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits,

and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

#### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### *Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;

- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;

- A description of the specific boundary of the proposed viticultural area, based on features found on United