

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 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule should be in place prior to the 2011 harvesting season, which begins approximately May 1, 2011. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 35

Administrative practice and procedures, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 35 is proposed to be amended as follows:

#### PART 35—EXPORT GRAPES AND PLUMS

1. The authority citation for 7 CFR part 35 continues to read as follows:

**Authority:** 48 Stat. 734; 7 U.S.C. 591–599.

2. In § 35.11, paragraphs (a) and (b) are revised to read as follows:

##### § 35.11 Minimum requirements.

(a) Any such variety for export to destinations in Japan, Europe (defined to mean the following countries: Albania, Austria, Belgium, Bosnia, Bulgaria, Croatia, Czech Republic, Denmark, England, Finland, France, Germany, Greece, Herzegovina, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Macedonia, Montenegro, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovenia, Spain, Sweden, Switzerland, Wales), or Greenland shall meet each applicable minimum requirement of the U.S. Fancy Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title). The Black Corinth variety shall be exempt from bunch and berry size requirements.

(b) Any such variety for export to any foreign destination, other than destinations in Japan, Europe, Greenland, Canada, or Mexico, shall meet each applicable minimum requirement of the U.S. No. 1 Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title), except that an additional 2 percent tolerance for sealed berry cracks on the Ribier variety is

allowed. The Black Corinth variety shall be exempt from bunch and berry size requirements.

\* \* \* \* \*

Dated: December 7, 2010.

**Craig Morris,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31197 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS–FV–10–0084; FV10–916/917–3 CR]

#### Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

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

**ACTION:** Referenda order.

**SUMMARY:** This document directs that referenda be conducted among eligible California nectarine, pear, and peach growers to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in California.

**DATES:** The referenda will be conducted from January 12 through February 2, 2011. To vote in these referenda, growers must have produced nectarines, pears, or peaches in California during the period April 1, 2010, through November 30, 2010.

**ADDRESSES:** Copies of the marketing orders may be obtained from the California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, United States Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or e-mail: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order Nos. 916 and 917 (7

CFR parts 916 and 917), hereinafter referred to as the “orders,” and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by growers. The referenda shall be conducted from January 12 through February 2, 2011, among eligible California nectarine, pear, and peach growers. Only growers that were engaged in the production of nectarines, pears, or peaches in California during the period of April 1, 2010, through November 30, 2010, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. Since that time, the pear industry has been regulated by a State marketing order. If the results of the pear referendum do not favor continuance, the pear order will be terminated. Otherwise, this suspension will remain in effect unless the pear industry recommends reactivation or termination of the Federal program.

Referendum requirements for the most recent cycle of continuance referenda were suspended by USDA because the orders were being amended at the time (72 FR 12038, March 15, 2007). USDA determined that it would be appropriate to allow the amended orders to operate for a period of time before asking growers to vote on continuance of the programs. The referenda ordered herein will thus be the first conducted since the orders were amended in 2006 (71 FR 41345, July 21, 2006).

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider terminating the orders if fewer than two-thirds of the growers voting in the referenda or growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance of their programs. In evaluating the merits of continuance versus termination, USDA will consider the results of the continuance referenda and all other relevant information regarding operation of the orders. USDA will evaluate the orders' relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the orders would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referenda herein ordered have been approved by the Office of Management and Budget (OMB), under OMB No. 0581-0189, "Generic Fruit Crops." It has been estimated that it will take an average of 20 minutes for each of the approximately 950 growers of California nectarines, pears, and peaches to cast a ballot. Participation is voluntary. Ballots postmarked after February 2, 2011, will not be included in the vote tabulation.

Jerry L. Simmons and Terry J. Vawter of the California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referenda agents of the Secretary of Agriculture to conduct these referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400-900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referenda agents or from their appointees.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements and orders, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements and orders, Peaches, Pears, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601-674.

Dated: December 7, 2010.

**Craig Morris,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-31201 Filed 12-10-10; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Doc. No. AMS-FV-10-0081; FV10-930-4 PR]

#### Tart Cherries Grown in the States of Michigan, *et al.*; Final Free and Restricted Percentages for the 2010-2011 Crop Year for Tart Cherries

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the establishment of final free and restricted percentages for the 2010-2011 crop year. The percentages are 58 percent free and 42 percent restricted and will establish the proportion of cherries from the 2010 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** Comments must be received by January 12, 2011.

**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 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.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) 734-5245, 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 proposed 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This proposed rule would establish final free and restricted percentages for tart cherries for the 2010-2011 crop year, beginning July 1, 2010, through June 30, 2011.

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 the Secretary 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, the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts proposed for the 2010-2011 crop year are: District two—Central Michigan; District three—Southern Michigan; District four—New York; District seven—Utah; District