

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97-930-1PR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Assessment Rate and Establishment of Late Payment and Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes the establishment of an assessment rate for the 1997-98 and subsequent fiscal periods to cover expenses incurred by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930. This rule also proposes the establishment of an interest rate and late payment charge on delinquent assessments owed by handlers under the tart cherry marketing order. Authorization to assess tart cherry handlers would enable the Board to incur expenses that are reasonable and necessary to administer the program. The interest rate and late payment charges would contribute to the efficient operation of the program by ensuring adequate funds are available to cover budgeted expenses incurred under the marketing order.

DATES: Comments received by August 4, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, FAX (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 720-2491, FAX (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; FAX # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are 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 proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order 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 July 1, 1997, and continuing until amended, suspended, or terminated. This proposed rule would 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 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 exempted 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 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.

This rule invites comments on establishing an assessment rate for the Board for the 1997-98 (July 1, 1997, through June 30, 1998) and subsequent crop years at \$0.0025 per pound of tart cherries. This rule also invites comments on establishing interest and late payment charges on past due assessments.

The tart cherry marketing order provides authority to the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program under the order. 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.

The Board met on January 8 and 9, 1997, and unanimously recommended expenditures of \$650,000 for an 18-month period ending June 30, 1998, and an assessment rate of \$0.0025 per pound of tart cherries. This was the first public meeting of the newly formed Board. The tart cherry marketing order became effective on September 25, 1996. The Department has approved the Board's 1997-98 budget of expenses. Until assessment income is available, the Board has obtained funds through a lending institution to fund Board operations.

As proposed, the Board would begin to assess handlers on July 1, 1997, and all assessments would be due to the Board office by October 1. Major expenditures recommended by the

Board for the 18-month period ending June 30, 1998, are \$25,000 for interest, Board meeting expenses \$175,000, salaries \$150,000, administration \$100,000, and compliance \$200,000. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of tart cherries. Tart cherry shipments for the 1997-98 year are estimated at 260 million pounds which should provide \$650,000 in assessment income. Funds in any reserve would be kept within the maximum permitted by the order.

The Board also recommended establishing an interest rate of 12 percent per annum and a late payment charge equal to 10 percent of the unpaid balance of the assessment amount due. The interest rate would be applied to any assessment not paid within 30 days of the October 1 due date. The late payment fee on the unpaid assessment balance by a handler would be assessed 90 days after the October 1 due date.

Under section 930.41 of the order, each person who first handles tart cherries is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's acquisitions.

Section 930.41 also provides that if a handler does not pay an assessment within the time prescribed by the Board, the assessment may be subject to an interest or late payment charge, or both.

A new section 930.141 is proposed to be established in the rules and regulations that specifies that assessments be subject to an interest charge of 1 percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the Board. The Board recommended that all assessments be paid by October 1 of each crop year. Assessments equal to 100 percent of the crop year's assessment obligation would be due on October 1.

Assessments are the main source of funds to pay Board expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the Board. Authority was placed in the order to levy interest and late payment charges on delinquent assessments. The interest rate and late payment charges proposed herein are similar to those established under other marketing orders. To attempt to collect delinquent assessments, the Board could incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of

assessments hampers the operation of the Board.

Handlers would have ample time to pay their assessments and avoid incurring the additional charges. Any amount paid by the handler would be credited upon receipt in the Board office.

Interest and late payment charges would provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It would not impose any costs on handlers who pay their assessments on time, and should contribute to the efficient administration of the program.

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of this program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 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 1,220 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule proposes establishing an assessment rate for the 1997-98 and subsequent fiscal periods to cover expenses of the Board at \$0.0025 per pound of tart cherries. The Board unanimously recommended expenditures for the 18-month period

ending June 30, 1998, of \$650,000. Tart cherry shipments for the year are estimated at 260 million pounds which should provide \$650,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Funds in any reserve would be kept within the maximum permitted under the order.

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of this program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

Major expenditures recommended for the 18-month period ending June 30, 1998, include \$25,000 for interest, \$175,000 for Board meeting expenses, \$150,000 for salaries, \$100,000 for administration and \$200,000 for program compliance. The \$200,000 for compliance is deemed necessary in the event volume control regulations are implemented during the 1997-98 season. The Board discussed setting an assessment rate that would allow for sufficient operation of a volume control program for the upcoming season. The Board decided that the assessment rate recommended would sufficiently cover all initial costs of implementing this new order. With regard to alternatives, this is a new marketing order that will begin its first full fiscal year of operations on July 1 of this year. Accordingly, we believe that since the recommended assessment rate would allow funds to be available to cover the initial costs of implementing the new order, including operation of a volume control program for the upcoming season, if implemented, the assessment rate should be proposed as recommended by the Board.

This action would not impose any additional reporting or recordkeeping 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. The new forms for the operation of the order have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0177.

The interest and late payment charges were also discussed at a public meeting. The Board believes the interest charge is a reasonable rate. The late payment fee is high enough to discourage late

payments and encourage the timely payment of assessments by handlers.

This rule would provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It would not impose any costs on handlers who pay their assessments on time, and should contribute to the efficient administration of the program.

Handlers who do not pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. In effect, this would provide handlers with an interest free loan.

Implementing interest and late payment charges would provide an incentive for handlers to pay assessments on time, which would improve compliance with the order. It would minimize actions taken against handlers who fail to pay assessments on time through administrative remedies or the Federal courts. These remedies, currently the only recourse against handlers who fail to pay assessments, can be costly and time consuming. This rule would remove any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

While this proposed rule would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. 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 Committee meetings, the January 8 and 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this proposed action on small businesses.

The assessment rate, interest rate and late payment charge proposed to be established in this rule would continue in effect indefinitely unless modified,

suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rate, interest rate and late payment charge 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 and interest rates and late payment charge. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment or interest rates or late payment charge is needed. Further rulemaking would be undertaken as necessary. The Board's 1997-98 budget has already been approved by the Department to allow the Board to expend funds that they have borrowed. Budgets for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

A 30-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, Tart cherries, Reporting and recordkeeping requirements.

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. A new subpart—Administrative Rules and Regulations and a new section 930.141 are added to read as follows:

Subpart—Administrative Rules and Regulations

§ 930.141 Delinquent assessments.

Pursuant to § 930.41, the Board shall impose an interest charge on any handler whose assessment payment has not been paid within 30 days from the

due date of October 1 of each crop year. The interest rate shall be a rate of one percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period. In addition to the interest charge, the Board shall impose a late payment charge on any handler whose payment has not been paid within 90 days from the due date of October 1. The late payment charge shall be 10 percent of the unpaid balance.

3. A new subpart—Assessment Rates and a new § 930.200 are added to read as follows:

Subpart—Assessment Rate

§ 930.200 Assessment rate.

On and after July 1, 1997, an assessment rate of \$0.0025 per pound is established for tart cherries grown in the production area.

Dated: June 27, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-17507 Filed 7-2-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA-97-09]

Milk in the Tennessee Valley Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; termination.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Tennessee Valley marketing area. A proposed amended Tennessee Valley order modifying interim transportation credit provisions failed to receive the required two-thirds approval in a recent polling of cooperatives in the marketing area. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present Tennessee Valley order.

DATES: Comments must be submitted on or before July 10, 1997.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building,