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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS-99-12]

Notice of Opportunity to Request a Soybean Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of opportunity to request referendum.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that soybean producers may request a referendum to determine if producers want a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act).

If at least 10 percent (not in excess of one-fifth of which may be producers in any one State) of the 600,813 eligible producers as determined by the Department of Agriculture (Department) nationwide participate in the Request for Referendum, a referendum will be held within 1 year from that determination. If results of the Request for Referendum indicate that a referendum is not supported, a referendum would not be conducted.

DATES: Soybean producers may request a referendum during a 4-week period beginning on October 20, 1999, and ending on November 16, 1999. Producers who certify that they were engaged in the production of soybeans anytime between January 1, 1997, and November 16, 1999, and who own or share the ownership and risk of loss of those soybeans are eligible to participate in the Request for Referendum.

Forms may be obtained by mail, fax, or in person from the Farm Service Agency (FSA) county offices from October 20, 1999, through November 16,

1999. Completed forms must be returned to FSA offices by fax or in person no later than November 16, 1999, or if returned by mail must be post marked by November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251. Telephone number 202/720-1115.

SUPPLEMENTARY INFORMATION: In accordance with the Act (7 U.S.C. 6301 *et. seq.*), this Notice announces the dates when the Request for Referendum will be conducted and the place where soybean producers may request a referendum on the Order. The Order appears in the Code of Federal Regulations at 7 CFR Part 1220. The Act provides that the Secretary, 5 years after the conduct of the initial referendum, shall give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities will be provided the opportunity to request a referendum, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA office serving the county where the producer owns or rents land. Participation in the Request for Referendum is not mandatory.

On August 20, 1999, the Department published in the **Federal Register** (64 FR 45413) a final rule that sets forth procedures the Department will use in conducting the Request for Referendum. The final rule includes definitions, provisions for supervising the process for requesting a referendum, eligibility, certification procedures for requesting the required forms, where the Request for Referendum will be conducted, counting forms, reporting results, and disposition of the forms and records. Since the Request for Referendum will be conducted at the county FSA offices, FSA employees will assist AMS by determining eligibility, counting ballots, and reporting results.

Pursuant to the Act the Department is conducting the required Request for Referendum from October 20, 1999, through November 16, 1999.

Producers who certify that they were engaged in the production of soybeans anytime between January 1, 1997, and November 16, 1999, and who own or share the ownership and risk of loss of those soybeans are eligible to participate in the Request for Referendum. Only those producers who are in favor of a referendum on the Order would participate.

Forms may be requested in person, by mail, or by facsimile from October 20, 1999, through November 16, 1999. Individual producers and other producer entities would request a referendum at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Completed forms must be postmarked, faxed, or returned in person no later than November 16, 1999.

The purpose of the Request for Referendum is to determine whether eligible producers favor the conduct of a referendum on the Order.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et. seq.*], the information collection requirements made in connection with the Request for Referendum have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581-0093.

Authority: 7 U.S.C. 6301-6311.

Dated: September 8, 1999.

Barry L. Carpenter,
Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99-23727 Filed 9-8-99; 4:04 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV99-923-1 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule changing the pack requirements currently prescribed under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule finalizes the establishment of two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The two additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter). This change will allow the Washington cherry industry to further differentiate cherries by row count/row size. The change is intended to provide handlers more marketing flexibility, clarify the choices available to buyers, and improve returns to producers.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Marketing Order No. 923 (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, 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 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 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. A 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 continues in effect changes to the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety or varieties of cherries grown in any district or districts of the production area during any period or periods. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under 923.52.

Minimum grade, size, quality, maturity, container, and pack requirements for cherries regulated under the order are specified in 923.322. Paragraph (e) of that section provides that when containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and that at least 90 percent, by count, of the cherries in any lot shall not be smaller than the corresponding diameter shown in Column 2 of the table: *Provided*, That the content of individual containers in the lot are not limited as to the

percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

The following table shows the row count/row size designations prior to this change:

TABLE

| Column 1, row count/row size | Column 2 diameter (inches) |
|------------------------------|----------------------------|
| 9 | 75/64 |
| 9½ | 71/64 |
| 10 | 67/64 |
| 10½ | 64/64 |
| 11 | 61/64 |
| 11½ | 57/64 |
| 12 | 54/64 |

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington cherries which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation. The additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter) and are shown in the following revised table from 923.322(e):

TABLE

| Column 1, row count/row size | Column 2 diameter (inches) |
|------------------------------|----------------------------|
| 8 | 84/64 |
| 8½ | 79/64 |
| 9 | 75/64 |
| 9½ | 71/64 |
| 10 | 67/64 |
| 10½ | 64/64 |
| 11 | 61/64 |
| 11½ | 57/64 |
| 12 | 54/64 |

When the row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data shows an increase of \$2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional \$2 and \$4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries produced and shipped is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size previously designated was 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row were not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

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, the 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 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 70 handlers of Washington cherries who are subject to regulation under the marketing order and approximately 1,100 cherry producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural

producers are defined as those having annual receipts of less than \$500,000.

Currently, about 93 percent of the Washington cherry handlers ship under \$5,000,000 worth of cherries and 7 percent ship over \$5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington cherry producers, the average annual grower revenue is approximately \$100,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Washington cherries may be classified as small entities.

This rule continues in effect changes to the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter).

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Price data shows an increase of \$2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional \$2 and \$4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size previously designated was 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row were not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The

Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will allow handlers to market larger cherries in containers designated with the larger row counts/row sizes. Accurate identification of the sizes packed in the containers is expected to benefit buyers. Further, this rule will allow handlers greater flexibility in marketing the Washington cherry crop.

The Committee did not discuss any alternatives to this rule, except not to allow the larger row count/row size designations for larger cherries. This was not acceptable because producers and handlers would not be able to reap the benefits expected from further differentiation of the larger sizes.

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

Further, the Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 15 members, of which 5 are handlers and 10 are producers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on June 24, 1999. A copy of the rule was mailed to the Committee's administrative office for distribution to producers and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 23, 1999. 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/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 Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 33741, June 24, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 923 which was published at 64 FR 33741 on June 24, 1999, is adopted as a final rule without change.

Dated: September 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-23791 Filed 9-10-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV99-947-1 FIR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All Counties in Oregon, Except Malheur County; Temporary Suspension of Handling Regulations and Establishment of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule suspending, for the 1999-2000 season only, the minimum grade, size, quality, maturity, pack, and inspection requirements currently prescribed under the Oregon-California potato marketing order. The marketing order regulates the handling of Irish potatoes grown in

Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). During this suspension of the handling regulations, reports from handlers will be required to obtain information necessary to administer the marketing order. This rule is expected to reduce industry expenses.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, 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 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 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. A 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 date of the entry of the ruling.

This rule continues in effect the suspension of the handling regulations currently prescribed under the order from July 1, 1999, to June 30, 2000. This rule allows the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. The handling regulations will resume July 1, 2000, for the 2000-2001 season and future seasons. This rule also establishes handler reporting requirements during the same time period. Reporting requirements will allow the Committee to obtain information from handlers necessary to administer the order.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under § 947.52.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Section 947.80 authorizes the Committee, with the approval of the Secretary, to require reports and other information from handlers that are necessary for the Committee to perform its duties.

Minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order are specified in § 947.340 *Handling Regulation* [7 CFR 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provides that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4 ounces; and be not more than moderately skinned. Additionally, potatoes packed in cartons must be U.S. No. 1 grade or better, with an additional