

southern boundary line of the San Bernardino National Forest to its intersection with U.S. Interstate 15; then northeast on U.S. Interstate 15 to its next intersection with the San Bernardino National Forest boundary line; then northwest, north, northeast, southeast, east, northeast, southeast, and east along the San Bernardino National Forest boundary line to its intersection with Palm Avenue; then southwest on Palm Avenue to U.S. Interstate 215; then southeast on U.S. Interstate 215 to University Parkway; then southwest on University Parkway to N. State Street; then south on N. State Street to State Highway 210; then west on State Highway 210 to the Southern Pacific railroad track; then south, southwest, south, and southeast along the Southern Pacific railroad track to its intersection with W. Base Line Street; then west on W. Base Line Street to N. Pepper Avenue; then south on N. Pepper Avenue to State Highway 66; then west on State Highway 66 to N. Cactus Avenue; then south on N. Cactus Avenue to W. Rialto Avenue; then west on W. Rialto Avenue to W. Arrow Boulevard; then west on W. Arrow Boulevard to Arrow Boulevard; then west on Arrow Boulevard to Cherry Avenue; then north on Cherry Avenue to State Highway 66; then west on State Highway 66 to East Avenue; then north on East Avenue to the point of beginning.

Done in Washington, DC, this 14th day of November 2006.

**Kevin Shea,**

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

[FR Doc. E6-19451 Filed 11-16-06; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV06-930-2 FR]

#### **Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Cherry Industry Administrative Board (Board) for the 2006-2007 fiscal year and subsequent fiscal years from \$0.0021 to \$0.0066 per pound to fund the Board's administrative expenses and its new research and promotion

program. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The Board locally administers the marketing order which regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The fiscal year began July 1, 2006, and ends June 30, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* This final rule becomes effective November 20, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734-5243, Fax: (301) 734-5275, or e-mail: [Dawana.Clark@usda.gov](mailto:Dawana.Clark@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 final rule is issued under Marketing Agreement and Order No. 930, as amended (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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherries are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2006, and continue until amended, suspended, or terminated. 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. 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 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 final rule increases the assessment rate established for the Board for the 2006-2007 and subsequent fiscal years for tart cherries from \$0.0021 to \$0.0066 per pound of tart cherries to fund the Board's administrative expenses and its new research and promotion program.

The tart cherry marketing order provides authority for the Board, with 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 to collect such assessment appears in § 930.41 of the order. In addition, § 930.48 of the order provides that the Board, with the approval of USDA, may establish or provide for the establishment of production research, marketing research, and market development projects 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 2003-2004 fiscal year, the Board recommended, and USDA approved, an assessment rate of \$0.0021 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 March 16, 2006, and recommended 2006–2007 expenditures of \$1,523,000 and an assessment rate of \$0.0066 per pound of tart cherries. Eighteen of the nineteen Board members voted in support of the assessment rate increase. One Board seat is vacant. In comparison, last year's budgeted expenses were \$488,000. The assessment rate of \$0.0066 is \$0.0045 higher than the rate currently in effect. The Board recommended that the assessment rate be increased to cover its administrative expenses and fund a new research and promotion program which will commence in Fall 2006. The \$0.0066 assessment rate will cover the costs of the research and promotion program which will be assessed at \$0.005 per pound (or \$10 per ton) of cherries for processing and \$0.0016 per pound for administrative expenses. The \$0.0016 per pound for administrative expenses will be a reduction from the 2005–2006 assessment rate of \$0.0021 per pound. The Board believes that its new research and promotion program is the best way for the industry to develop both stronger demand for tart cherries and tart cherry products and increase sales opportunities.

According to a recent Board survey, both growers and handlers believe a research and promotion program will benefit the industry. This program will be directed primarily at consumers and retail nutrition advisors, and employ promotional strategies, such as print advertising. All tart cherry handlers regulated under the marketing order will pay the proposed assessment rate to fund the new research and promotion program. However, certain organic handlers may be exempt from paying assessments for market promotion activities pursuant to 7 CFR 900.700.

The major expenditures recommended by the Board for the 2006–2007 fiscal year include \$1,150,000 for promotion, \$169,000 for personnel, \$82,000 for meetings, \$77,000 for office expenses, \$20,000 for compliance, and \$5,000 for industry educational efforts. Budgeted expenses for major items in 2005–2006 were \$159,000 for personnel, \$150,000 for compliance, \$81,000 for meetings, \$93,000 for office expenses, and \$5,000 for industry educational efforts. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Board determined assessable tart cherry production for the fiscal period at 230 million pounds. Therefore, total assessment income for 2006–2007 is estimated at \$1,518,000 (230 million pounds × \$0.0066). This amount plus adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately \$411,000) will be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

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

Although the assessment rate will be effective for an indefinite period, the Board will 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 will be undertaken as necessary. The Board's 2006–2007 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

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 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 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, which includes handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. The majority of producers and handlers of tart cherries under the order 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 2001–2002 through 2005–2006, approximately 93.8 percent of the U.S. tart cherry crop, or 214.3 million pounds, was processed annually. Of the 214.3 million pounds of tart cherries processed, 62 percent was frozen, 26 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 37,100 acres in 2005–2006. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 74 percent of the total and produces about 72 percent of the U.S. tart cherry crop each year.

This rule increases the assessment rate established for the Board and collected from handlers for the 2006–2007 and subsequent fiscal periods from \$0.0021 to \$0.0066 per pound of tart cherries.

The Board discussed continuing the existing assessment rate, but concluded that it needed the additional funds to devote to its research and promotion program which will be funded through assessments.

This action increases 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 rule will 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.

The 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 rule.

A proposed rule was published in the **Federal Register** on June 21, 2006 (71 FR 35562). Copies of the proposed rule were mailed or sent via facsimile to all Board members and cherry handlers. Finally, the proposed rule was made available through the Internet USDA and the Office of the Federal Register. A 20-day comment period ending July 11, 2006, was provided to allow interested persons to respond to the proposal. One comment was received.

The commenter opposed the proposal on the basis that the increased assessment rate is indefinite and that Congress should vote on it. The commenter also stated that the recommended assessment rate represents a large increase and that we are, in essence, raising taxes on people who have no representation that is directly accountable to those people. Finally, the commenter was of the view that federalism issues and Executive Order 13132 applies. In response to the commenter, and as previously stated in this action, the tart cherry marketing order, as issued in accordance with the Agriculture Marketing Act of 1937, provides the authority for the Board, with USDA approval, to formulate a budget and collect assessments from handlers to administer the program. The members of the Board are producers and handlers who are nominated and elected by their peers to represent their respective production areas/districts to address issues that come before the Board. The assessment rate is formulated and discussed in a public meeting. All directly affected persons have an opportunity to participate and provide input. Finally, this rule does not have sufficient Federalism implications to warrant an assessment under Executive Order 13132.

Accordingly, no changes will be made to this rule based on the comment 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/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 information and recommendation submitted by the Board 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–2007 fiscal period began on July 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 20-day comment period was provided for in the proposed rule.

#### 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 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 July 1, 2006, the assessment rate imposed on handlers shall be \$0.0066 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 costs of the new research and promotion program and \$0.0016 per pound of cherries to cover administrative expenses.

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 948**

[Docket No. FV06–948–1 FIR]

#### **Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate**

**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 which suspended the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2006–2007 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period begins July 1 and ends June 30. The assessment rate will remain suspended until an appropriate rate is reinstated.

**DATES:** *Effective Date:* December 18, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (503) 326–2724; Fax: (503) 326–7440 or E-mail: [Teresa.Hutchinson@usda.gov](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@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 Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes