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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS-FV-13-0030; FV13-930-2 FIR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Revising Handler Reporting and Grower Diversion Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed handler reporting and grower diversion requirements prescribed under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Cherry Industry Administrative Board (Board) locally administers the order. The interim rule changed the deadline for submitting the handler reserve plan from November 1 to October 1 and extended the deadline for redeeming or transferring grower diversion certificates from November 1 to June 30 of a given crop year. These changes provide the industry with a more complete and

timely picture of the available supply of tart cherries earlier in the season and give handlers more time and flexibility in meeting their obligations under volume regulation.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Jennie.Varela@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order and Agreement No. 930, as amended (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 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."

USDA is issuing this rule in conformance with Executive Orders 12866 and 13563.

Prior to this change, handlers were required to submit a handler reserve plan and use grower diversion credits by November 1 of the crop year. A crop year is a 12-month period beginning on July 1 and ending on June 30 of the following year. The order was recently amended to exempt cherries diverted in the orchard (grower diversion) from inclusion in a handler's total volume calculation. When a volume regulation is issued, handlers are obligated to keep a percentage of their total volume in reserve or account for the restricted volume with diversion certificates. These certificates can be earned through export sales, new market or new product sales, or through grower diversion. Before the amendment, the volume of cherries represented by a grower diversion certificate was added to the handler's total volume.

As the volume represented by diversion certificates is no longer part of the total volume calculation, handlers no longer need these certificates to complete the reserve plan. Consequently, the Board believes handlers will be able to complete the simplified reserve plan at an earlier date and recommended changing the date of submission from November 1 to October 1 to provide the industry with a more complete and timely picture of the available supply of tart cherries.

Further, with the amendment to the order, grower diversion certificates no longer need to be linked to when the handler reserve plan is due. To bring consistency to the use of all types of diversion certificates, the Board recommended allowing handlers to transfer and redeem grower diversion certificates through the end of the season, June 30. This change provides handlers with additional time and flexibility in meeting their restriction obligations.

In addition to adjusting the deadline for submitting the handler reserve plan and extending the deadline for redeeming grower diversion certificates, this rule also makes a minor wording change to § 930.158 to facilitate the change in date.

In an interim rule published in the **Federal Register** on August 1, 2013, and effective on August 2, 2013, (78 FR 46494, Doc. No. AMS-FV-13-0030; FV13-930-2 IR), § 930.158 was amended by changing the date "November 1" to "June 30." Further, § 930.159 was amended by changing "November" to "October" in the first sentence and by revising the words "certificates redeemed" to read "certificates to be redeemed" in the fourth sentence.

Final 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses 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.

There are approximately 600 tart cherry producers in the regulated area and approximately 40 tart cherry

handlers who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000 and small agricultural service firms have been defined as those having annual receipts of less than \$7,000,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service and the Board, the average annual grower price for tart cherries during the 2012-13 season was \$0.54 per pound, and total shipments were around 85 million pounds. Therefore, average receipts for tart cherry producers were around \$76,200, well below the SBA threshold for small producers. In 2013, The Food Institute estimated an f.o.b. price of \$0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Based on this information, average annual handler receipts were about \$1.8 million, also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of tart cherry producers and handlers may be classified as small entities.

This rule continues in effect an interim rule that changed the deadline for submitting the handler reserve plan from November 1 to October 1 and extended the deadline

for redeeming or transferring grower diversion certificates from November 1 to June 30 of a given crop year. These changes provide the industry with a more complete and timely picture of the available supply earlier in the season. In addition, the new deadline gives handlers more time and flexibility to meet their obligations under volume regulation. This rule amends the provisions of §§ 930.158 and 930.159. Authority for the change in the order's rules and regulations is provided in §§ 930.58 and 930.59.

It is not anticipated that this rule will generate any additional costs for growers or handlers. This action is intended to adjust regulations to reflect recent amendments to the order and to allow the order to function more efficiently. These changes are expected to benefit the industry by providing a clear picture of available supply earlier in the season, and by allowing handlers more time to utilize grower diversion certificates to meet their obligations under volume regulation. These changes should impact all entities positively, regardless of size.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB

No. 0581-0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). This rule required changes to Cherry Industry Administrative Board Form 4, "Handler Reserve Plan and Final Pack Report." However, these changes are minor and the currently approved burden for the form remains the same. The revised form has been submitted to OMB for approval as part of the routine three-year renewal of all forms related to this order.

This rule will not impose any 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend videoconference meetings at regional locations or call in to participate in Board deliberations. Like all Board meetings, the March 21, 2013, meeting was a public meeting and all entities, both

large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 30, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0030-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 46494, August 1, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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

Accordingly, the interim rule that amended 7 CFR part
930 and was published at 78 FR 46494 on August 1, 2013, is
adopted as a final rule, without change.

Dated: January 10, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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