



Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS-SC-22-0052]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Amendments to the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking amends Marketing Order No. 930, which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The amendments modify the basis for calculating district representation on the Cherry Industry Administrative Board (Board), change the starting date for the term of office for Board members, simplify the way a Board member's sales constituency is determined, clarify how the sales constituency applies to alternate Board members, change the timeframe for submitting nominations, and clarify when districts are subject to volume regulation.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or E-mail: Christy.Pankey@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program,

AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Antoinette.Carter@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 referred to as 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 Board locally administers the Order and is comprised of growers and handlers of tart cherries operating within the area of production and a public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Order 12866, as amended by Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this final rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the U.S. Department of Agriculture (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 requesting 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, 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 no later than 20 days after the date of entry of the ruling.

Section 8c(17) of the Act (7 U.S.C. 608c(17)) and § 900.43 of the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments in this final rule are not unduly complex and the nature of the amendments is appropriate for

utilizing the informal rulemaking process to amend the Order. This final rule encompasses a number of changes that are primarily administrative and modernizing in nature. These changes clarify regulatory text or align it with current industry practices. The changes also simplify the administration of seating the Board. During the referendum, eligible producers and processors favored all the amendments. At least two-thirds of the eligible producers who voted, or those representing at least two-thirds of the eligible volume, supported each amendment. Additionally, participating processors representing more than fifty percent of the frozen or canned tart cherry volume within the production area voted in favor of each amendment. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the “Final Regulatory Flexibility Analysis” section of this final rule. Each amendment applies equally to all producers and handlers, regardless of size. Each amendment also has no additional impact on the reporting, record-keeping, or compliance costs of small businesses.

All eighteen Board members voted unanimously in favor of all the proposed amendments to the Order following deliberations at a public meeting held on February 15, 2022, except that the amendment related to the method for establishing a member’s sales constituency received one dissenting vote. The Board formally submitted its recommendation to amend the Order through the informal rulemaking process on April 8, 2022. At USDA’s request, the Board conducted an additional meeting on December 15, 2022, to publicly clarify its original intent that the sales constituency provisions of the proposal would apply to both growers and handlers, and that sales constituency would be established at the time of nomination. Specifically, the Board revised the language of its initial recommendation to clarify that a member’s sales constituency is established at the time of nomination. The Board then unanimously affirmed, with sixteen voting members present, to clarify that the established sales constituency applies to both handlers and

growers for the duration of the term of office. A separate vote to remove the words “and appointment” from the language received fifteen votes in favor and one dissenting vote from a member who believed sales constituency should be calculated at the time of appointment.

A proposed rule soliciting public comments on the proposed amendments was published in the **Federal Register** on December 4, 2023 (88 FR 84075). AMS received two comments: one comment from the Wisconsin Department of Agriculture in support of all proposed amendments, noting the proposed changes would have a favorable impact on the Wisconsin cherry industry, and another from a Michigan handler opposing Proposal 1 of the proposed rulemaking. After reviewing the comments, AMS published a proposed rule and referendum order in the **Federal Register** on July 19, 2024 (89 FR 58636). The proposed rule and referendum order addressed the comments received and also directed that a referendum among tart cherry producers and handlers (processors) be conducted from August 26, 2024, through September 16, 2024, to determine whether they favored the proposals. To become effective, each amendment had to be approved by at least two-thirds of the eligible producers voting in the referendum or by producers representing at least two-thirds of the eligible volume. In addition, each amendment had to be favored by processors representing more than fifty percent of the frozen or canned tart cherry volume within the production area. All the amendments met these requirements. A detailed summary of the referendum results is available online at <https://www.ams.usda.gov/content/tart-cherry-producers-vote-amend-federal-marketing-order>.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 330 tart cherry growers in the production area and approximately 29 handlers subject to regulation under the Order. At the time of this analysis, the Small Business Administration (SBA) defined small agricultural producers of tart cherries as those having annual receipts equal to or less than \$3,500,000 (Other Noncitrus Fruit Farming, North American Industry Classification System Code 111339). Small agricultural service firms were defined as those having annual receipts equal to or less than \$34,000,000 (Postharvest Crop Activities, North American Industry Classification System Code 115114) (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reported that the 2023-24 value of the tart cherry crop for processed utilization was approximately \$41.4 million. The tart cherry production was 207.1 million pounds and the season average grower price for processed tart cherries was \$0.20 per pound. Dividing the crop value by the estimated number of producers (330) yields an estimated average annual receipts per producer of \$125,318 (\$41.4 million divided by 330 producers). This is well below the SBA threshold for small producers.

To calculate handler value, AMS uses data from USDA purchases of dried tart cherries for feeding programs as a proxy for prices received by handlers. In 2024, the average price paid by USDA for dried tart cherry products was \$4.984 per pound. The dried cherry price was converted to a raw product equivalent price of \$0.997 per pound at an industry recognized ratio of five to one (\$4.984 divided by 5 equals \$0.997). Multiplying this price by 2023 total processed utilization of 207.1 million pounds results

in an estimated handler-level tart cherry value of \$206.4 million (\$0.997 per pound multiplied by 207.1 million pounds). Dividing this figure by the number of handlers (29) yields estimated average annual receipts per handler of approximately \$7.1 million (\$206.4 million divided by 29 handlers), which is well below the SBA threshold of \$34 million for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

AMS has determined that the amendments as effectuated by this final rule will not have a significant impact on a substantial number of small businesses. Rather, these changes will help further standardize and stabilize Board membership and improve Board efficiency and decision making throughout the year. No small businesses are unduly or disproportionately burdened by the amendments.

This final rule modifies the basis for calculating district representation on the Cherry Industry Administrative Board (Board), changes the starting date for the term of office for Board members, simplifies the way a Board member's sales constituency is determined, clarifies how the sales constituency applies to alternate Board members, changes the timeframe for submitting nominations, and clarifies when districts are subject to volume regulation. The revised voting requirements will result in less confusion for some Board members, which can disrupt Board operations.

The Board considered the benefits and costs of maintaining the status quo as an alternative to this action. However, the Board believes the amendments are necessary to ensure the efficient execution of the Order.

Paperwork Reduction Act

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 OMB and assigned OMB No. 0581-0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those

requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does not impose 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.

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 action.

The Board's meetings are widely publicized throughout the tart cherry production area. All interested persons were invited to attend the meetings and encouraged to participate in Board deliberations on all issues. Like all Board meetings, the meetings held on February 15, 2022, and December 15, 2022, were open to the public, and all entities, both large and small, were encouraged to express their views on the proposed amendments.

AMS published a proposed rule concerning this action in the **Federal Register** on December 4, 2023 (88 FR 84075). A copy of the rule was sent via email to Board staff for distribution to all Board members and Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin tart cherry growers and handlers. The proposed rule was also made available by USDA through the Internet and the Office of the Federal Register. A 60-day comment period ending February 2, 2024, was provided to allow interested persons an opportunity to respond to the proposals. AMS received one comment in support of all the proposed amendments and one comment opposing one of the proposals. Based on all the information available to AMS, including both comments

received in response to the proposed rule, no substantive changes were made to the amendments as proposed.

AMS then published a proposed rule and referendum order on July 19, 2024 (89 FR 58636). That document directed that a referendum among Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin tart cherry producers and handlers (processors) be conducted from August 26, 2024, through September 16, 2024, to determine whether they favored the proposals. To become effective, each amendment had to be approved by at least two-thirds of the eligible producers voting in the referendum or by producers representing at least two-thirds of the eligible volume. In addition, each amendment had to be favored by processors representing more than fifty percent of the frozen or canned tart cherry volume within the production area. The referendum results show each of the amendments met the requirements to become effective.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin¹

Findings and Determinations

(a) Findings and Determinations Upon the Basis of the Rulemaking Record

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 930; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 930 as amended, and as hereby amended and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. Marketing Order 930 as amended, and as hereby amended regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 930 as amended, and as hereby amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 930 as amended, and as hereby amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries produced or packed in the production area; and

5. All handling of tart cherries grown or handled in the production area, as defined in Marketing Order 930 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations.

It is hereby determined that:

1. The issuance of this amendatory Order, amending the aforesaid Order, is favored or approved by at least two-thirds of the eligible producers or by producers representing at least two-thirds of the eligible volume that voted in the referendum on the question of approval and who, during the period of July 1, 2023, through June 30, 2024, were engaged within the production area in the production of such tart cherries; and is favored by handlers (processors) representing more than fifty percent of the frozen or canned tart cherry volume within the production area during the representative period.

2. The issuance of this amendatory Order advances the interests of producers of tart cherries in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator and published in the **Federal Register** (88 FR 84075) on December 4, 2023, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 930 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. Amend § 930.20 by:

- a. Revising paragraph (b) introductory text and paragraph (f);
- b. Redesignating paragraphs (g), (h), and (i), as paragraphs (i), (j), and (k); and
- c. Adding new paragraphs (g) and (h).

The revisions and the additions read as follows:

§ 930.20 Establishment and membership.

* * * * *

(b) District representation on the Board shall be based upon the maximum volume of production in the most recent five harvests in the district and shall be established as follows:

* * * * *

(f) If the maximum production for the most recent five harvests in a district changes so that a different number of seats should be allocated to the district, then the Board will be reestablished by the Secretary and such seats will be filled according to the applicable provisions of this part. Each district's maximum production for the five most recent harvests shall be determined every five years and as soon as possible after the most recent year's production is known.

(g) In the event of substantial changes within a district that require reconsideration of the number of seats allocated to the district, the Board may recommend, and pursuant thereto, the Secretary may approve, allocation of a different number of seats to the district. In making any such recommendation, the Board shall consider:

- (1) Shifts in tart cherry acreage and/or the number of bearing trees within districts and within the production area during recent years;
- (2) The volume of tart cherries produced in the district;

- (3) The importance of either increased or decreased production in its relation to existing districts;
- (4) The equitable relationship of Board membership and districts;
- (5) Economies to result for producers in promoting efficient administration of the Board due to reapportionments;
- (6) Other relevant factors.
- (h) No change in the allocated number of seats for district(s) may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for a change in allocated seats may be made less than six months prior to such date.

* * * * *

3. Revise § 930.22 to read as follows:

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board shall be for three years beginning on June 1 of the year when appointed and ending on May 31 three years later: Provided that, of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one year, one-third of such members and alternates shall serve only two years, and one-third of such members and alternates shall serve three years; and one-half of the initial members and alternates from Districts 4 and 7 shall serve only one year, and one-half of such initial members and alternates shall serve two years (determination of which of the initial members and their alternates shall serve for one, two, or three years shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified, and are appointed. The consecutive terms of office of grower, handler and public members and alternate members shall be limited to

two 3-year terms, excluding any initial term lasting less than three years. The term of office of a member and alternate member for the same seat shall be the same. The term of office specified in this section will become effective for all members, including members whose terms are not expiring, upon the first nomination cycle following the effectiveness of the final rule establishing this new term of office.

The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

4. Amend § 930.23 by revising paragraphs (b)(2), (3), (4), (7) and paragraph (c)(3)(ii) to read as follows:

§ 930.23 Nomination and election.

* * * * *

(b) * * *

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of one or more handler(s), other than the nominee, from the nominee's district who is or are eligible to vote in the election and that handle(s) a combined total of no less than five percent (5%) of the previous three-year average production handled in the district. Provided, that this requirement shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(i). The requirement that the petition form be signed by a handler other than the nominee shall not apply in any district where fewer than two handlers are eligible to vote.

(3) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any nomination cycle. If a grower produces cherries in more than one district, that grower

may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A grower may not participate in the nomination process in one district and the election process in a second district in the same election cycle. A grower's sales constituency is determined by the common marketing organization or brokerage firm or individual representing a group of handlers and growers that purchased the majority of pounds of the grower's fruit in a given year. For the duration of a grower's term on the Board, the sales constituency affiliation for said grower will be the affiliation at the time of their nomination and will be based on the most recently harvested crop at that time.

(4) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any nomination cycle. If a handler handles cherries in more than one district, that handler may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A handler may not participate in the nominations process in one district and the elections process in a second district in the same election cycle. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower. For the duration of a handler's term on the Board, the sales constituency affiliation for said handler will be the affiliation at the time of nomination.

* * * * *

(7) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations

for such position should be submitted to the Secretary or the Board not less than 60 days prior to the expiration of such term.

(c) * * *

(3) * * *

(ii) To be seated as a handler representative in any district, the successful candidate must receive the support of handler(s) that handled a combined total of no less than five percent (5%) of the previous three-year average production handled in the district; Provided, that this paragraph shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(i).

* * * * *

5. Revise § 930.28 to read as follows:

§ 930.28 Alternate members.

(a) An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided*, that such alternate represents the same group (grower or handler) as the member and is not from the same sales constituency as another acting member or acting alternate member in that district. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

(b) Alternate members may be from the same sales constituency as the member for whom they serve as an alternate. In the event a member and his or her alternate are absent from a meeting of the Board, another alternate may act for the member following

the requirements of § 930.28(a), provided this does not create a sales constituency conflict with the other members of that district.

(c) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

6. Amend § 930.52 by revising paragraphs (a) and (d) to read as follows:

§ 930.52 Establishment of districts subject to volume regulations.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 5 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 5-year period in which the 6-million-pound average production requirement is exceeded in that district.

* * * * *

(d) Any district producing a crop which is less than 50 percent of the average annual production in that district in the previous 5 years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

* * * * *

§ 930.62 [Amended]

7. Amend § 930.62 by removing in the introductory text of paragraph (a) the text “§ 940.51” and adding in its place the text “§ 930.51”.

Erin Morris,
Administrator.
Agricultural Marketing Service.

[FR Doc. 2025-19274 Filed: 10/1/2025 8:45 am; Publication Date: 10/2/2025]