

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 923

[Docket No. FV02-923-1 FIR]

#### **Sweet Cherries Grown in Designated Counties in Washington; Establishment of Procedures To Allow the Grading or Packing of Sweet Cherries Outside the Production Area**

**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 allowing the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order which regulates the handling of sweet cherries grown in designated counties in Washington. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Washington Cherry Marketing Committee (Committee) on forms provided by the Committee. The reporting requirement will provide the Committee with safeguard information on the grading or packing of sweet cherries outside the production area to assure that acceptable quality fruit is shipped. This rule will provide greater flexibility in the grading, packing, and marketing of Washington sweet cherries. In some cases, the facilities outside the production area are closer to where the fruit is produced, and the ability to grade and pack outside the production area could reduce costs. This rule was recommended unanimously by the Committee, the agency responsible for local administration of the order.

**EFFECTIVE DATE:** July 23, 2003.

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

Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724; Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

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. 134 and Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, 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 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 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. 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 not later than 20 days after the date of the entry of the ruling.

Minimum grade, size, maturity, container, pack and inspection requirements are currently established under the order. This rule continues in effect procedures and safeguard requirements that allow for the grading or packing of Washington sweet cherries outside the production area. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Committee on forms provided by the Committee.

Consistent with the authorities and procedures outlined in the Act, the order was amended on November 21, 2001 (66 FR 58350). One of the amendments increased the size of the production area to include all counties east of the Cascade Mountain Range and provided authority in § 923.54 for the establishment of procedures to allow the shipment of Washington sweet cherries outside the production area for grading and packing. Section 923.54 also provides authority for the establishment of such safeguards as may be necessary to ensure the sweet cherries are handled in accordance with the order's provisions.

The Committee met on May 14, 2002, and unanimously recommended the establishment of procedures and safeguard requirements to allow the grading or packing of sweet cherries outside the production area. Currently, all cherries are required to be graded and packed before leaving the production area. Committee members believe that this will give shippers an opportunity to choose those grading and packing facilities that will be most beneficial to their individual circumstances. The grading and packing costs that are charged to growers may be different among different handlers in the production area or packing facilities outside the production area. There may be differences in the type of packaging or other services offered by packing facilities within or outside the production area.

For example, a packing facility outside the area of production is