

(1) How can the Department best promote meaningful periodic reviews of its existing significant regulations, and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules for review?

(3) Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory requirements?

(9) Are there any of the Department's regulations that are not tailored to impose the least burden on society, consistent with achieving the regulatory objectives?

(10) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time?

(11) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DHS regulatory programs?

(12) Are there any regulations that create difficulty because of duplication, overlap, or inconsistency of requirements?

The Department notes that this notice is issued solely for information and program-planning purposes. Responses

to this notice do not bind DHS to any further actions related to the response.

Ivan K. Fong,
General Counsel.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS-FV-10-0087; FV10-930-5; AO-370-A9; 11-0093]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement and Order No. 930 (order), which regulate the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Three amendments are proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The proposed amendments would change how grower diversion of cherries is accounted for under the order and would affect volume control in years when grower diversions are utilized. In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order or administrative rules and regulations to conform to any amendment that may result from the hearing. These proposed amendments are intended to improve the operation and administration of the order.

DATES: The hearing dates are:

1. April 20, 2011, 9 a.m. to 5 p.m.; and continuing on April 21, 2011, at 9 a.m., if necessary, in Grand Rapids, Michigan.
2. April 26, 2011, 9 a.m. to 5 p.m.; and continuing on April 27, 2011, at 9 a.m., if necessary, in Provo, Utah.

ADDRESSES: The hearing locations are:

1. Grand Rapids—U.S. Bankruptcy Court, One Division Ave., N, 3rd Floor Courtroom A, Grand Rapids, MI 49503.
2. Provo—Utah County Administration Building, 160 E. Center Street, Room L900, Provo, Utah 84606.

FOR FURTHER INFORMATION CONTACT:

Parisa Salehi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250, telephone: (202) 720-9918, Fax: (202) 720-8938; or Kathleen M. Finn, 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: Parisa.Salehi@usda.gov or Kathy.Finn@usda.gov.

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-6862, Fax: (202) 720-8938, or e-mail: Antoinette.Carter@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

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. 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 USDA's ruling on the

Ex 1

petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules and supplemental rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the Board and initially submitted to USDA on September, 2010. Additional information was submitted in November 2010 at the request of USDA and a determination was subsequently made to schedule this matter for hearing.

The proposed amendments to the order recommended by the Board are summarized as follows:

1. Amend the definition of "handle" in § 930.10 of the order so handler acquisition of grower diversion certificates is not considered handling.

2. Amend the "marketing policy" provisions in § 930.50 of the order so grower-diverted cherries are not counted as production in the volume control formula.

3. Amend § 930.58 of the order so grower-diverted cherries are not treated as actual harvested cherries.

The Board works with USDA in administering the order. These proposals submitted by the Board have not received the approval of USDA. The proposed amendments are intended to improve the operation and administration of the order.

In addition to the proposed amendments to the order, AMS proposes to make any such changes as may be necessary to the order or administrative rules and regulations to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent

practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Board in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

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

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposal submitted by the Cherry Industry Administrative Board:

Proposal Number 1

3. Revise the introductory paragraph in § 930.10 to read as follows:

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59, or to otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof. *Provided*, That the term handle shall not include:

* * * * *

4. Revise paragraphs (d) and (e) of § 930.50 to read as follows:

§ 930.50 Marketing policy.

* * * * *

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review the most current information available including, but not limited to, processed production and grower diversions of cherries during the current crop year. The Board shall make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

- (1) The estimated total production of cherries;
- (2) The estimated size of the crop to be handled;
- (3) The expected general quality of such cherry production;
- (4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;
- (5) The expected demand conditions for cherries in different market segments;
- (6) Supplies of competing commodities;
- (7) An analysis of economic factors having a bearing on the marketing of cherries;
- (8) The estimated tonnage held by handlers in primary or secondary inventory reserves;
- (9) Any estimated release of primary or secondary inventory reserve cherries during the crop year; and
- (10) The quantity of grower-diverted cherries during the crop year.

* * * * *

5. Revise paragraph (a) of § 930.58 to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage

cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

Proposal submitted by USDA:

Proposal Number 2

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 4, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011-0717 Filed 3-11-11; 6:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Doc No. AMS-FV-10-0092]

Mango Promotion, Research, and Information Order; Reapportionment

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the number of members on the National Mango Board (Board) from 20 to 18 to reflect the elimination of two non-voting wholesaler/retailer positions. In accordance with the Mango Promotion, Research, and Information Order (Order), which is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act), a review of the composition of the Board must be conducted every five years. The Board has reviewed the production volumes and geographical distribution of domestic and imported mangos, and submitted this information to the U.S. Department of Agriculture with a recommendation that no changes be made to the number of importer, first handler, or producer seats on the Board. However, the Board recommends elimination of two non-voting wholesaler/retailer positions that have not been filled since 2007.

DATES: Comments must be received by April 13, 2011.

ADDRESSES: Comments may be submitted electronically at <http://www.regulations.gov>. Comments may also be sent to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Room 0632-S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250-0244; fax: 202-205-2800. All comments should reference the document number and the date and page number of this issue of the *Federal Register*. Comments will be made available for public inspection in the above office during regular business hours, or may be viewed at <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Veronica Douglass, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, Room 0632-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; telephone: 888-720-9917; fax: 202-205-2800; or e-mail: veronica.douglass@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mango Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1206]. The Order is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411-7425].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order,

any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action, so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than \$750,000, and small agricultural service firms as those having annual receipts of no more than \$7 million (13 CFR part 121). First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. Currently, fewer than five first handlers and 193 importers are subject to assessment under the Order. The majority of producers would be considered small businesses. The majority of these first handlers and importers would be considered small businesses, while wholesalers and retailers would not.

First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment. In addition, domestic producers, foreign producers, wholesalers, and retailers are not subject to assessment under the Order, but such individuals are eligible to serve on the Board along with importers and first handlers.

Section 1206.30 (c) of the Order requires that the Board review the volume and geographical distribution of mango production and imports at least once every five years. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes