

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Doc. No. AMS-FV-10-0029; FV10-930-2 FR]

#### **Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate for the 2010-2011 Crop Year for Tart Cherries**

**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 2010-2011 fiscal period from \$0.0066 to \$0.0075 per pound of assessable tart cherries. The Board locally administers the marketing order which regulates the handling of tart cherries grown in Michigan, New York, Oregon, Pennsylvania, Utah, Washington, and Wisconsin. Assessments upon tart cherry handlers are used by the Board to fund reasonable and necessary expenses of the program. The 2010-2011 fiscal period year begins October 1, 2010. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* September 21, 2010.

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

Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734-5243, Fax: (301) 734-5275; E-mail:

[Kenneth.Johnson@ams.usda.gov](mailto:Kenneth.Johnson@ams.usda.gov).

Small businesses may request information on complying with this regulation 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) 720-2491, Fax: (202) 720-8938, or E-mail: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, tart cherry handlers 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 October 1, 2010, and continue until amended, suspended, or terminated.

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 exempt 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 rule increases the assessment rate established for the Board for the 2010-2011 and subsequent fiscal periods from \$0.0066 to \$0.0075 per pound of assessable tart cherries. The 2010-2011 fiscal period begins on

October 1, 2010, and ends on September 30, 2011.

The tart cherry marketing order provides authority for the Board, with the 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 for the Board to collect such assessments appears in § 930.41 of the order. That section also provides that each part of an assessment rate intended to cover administrative costs and research and promotional costs be identified. Section 930.48 of the order provides that the Board, with the approval of the USDA, may establish or provide for the establishment of production research, market research and development, and/or promotional activities 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 2006-2007 fiscal year, the Board recommended, and USDA approved, an assessment rate of \$0.0066 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 January 26, 2010, and recommended 2010-2011 expenditures of \$1,665,000 and an assessment rate of \$0.0075 per pound of tart cherries. The Board's recommendation was unanimous. In comparison, last year's budgeted expenses were \$1,558,900. The Board recommended that the assessment rate be increased to cover increases in administrative expenses. The assessment rate has not been increased

in four years. The current assessment rate to cover administrative costs is \$0.0016. The increase will raise the assessment rate for administrative expenses to \$0.0025. In addition, a portion of the assessment rate (\$0.005 per pound of cherries) will continue to fund the Board's research and promotion program. The total assessment rate for 2010–2011 and beyond will be \$0.0075, an increase of approximately 14 percent over the current rate of \$0.0066.

The major expenditures recommended by the Board for the 2010–2011 year include \$1,150,000 for promotion, \$213,000 for personnel, \$109,000 for compliance, \$102,000 for office expenses, \$86,000 for Board meetings, and \$5,000 for industry educational efforts. Budgeted expenses for major items in 2009–2010 were \$1,150,000 for promotion, \$175,900 for personnel, \$92,800 for Board meetings, \$44,200 for compliance, \$58,400 for office expenses, and \$2,500 for industry educational efforts, respectively.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 230 million pounds. Therefore, total assessment income for 2010–2011 is estimated at \$1,725,000 (230 million pounds  $\times$  \$0.0075). This will be adequate to cover budgeted expenses. Any excess funds will be placed in the financial reserve, which is estimated to be \$267,000, well within the approximately six months' operating expenses as required by § 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 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 2010–2011 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the USDA.

### **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 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 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 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. A majority of the producers and handlers 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 1997/98 through 2008/09, approximately 96 percent of the U.S. tart cherry crop, or 244.4 million pounds, was processed annually. Of the 244.4 million pounds of tart cherries processed, 61 percent was frozen, 27 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 34,650 acres in 2008/09. This represents a 31 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

This rule increases the assessment rate established for the Board for the 2010–2011 and subsequent fiscal periods from \$0.0066 to \$0.0075 per pound of assessable tart cherries. The 2010–2011 fiscal period begins on October 1, 2010, and ends on September 30, 2011.

The Board discussed continuing the existing assessment rate, but concluded that the rate needed to be increased in order to meet recommended expenses. The assessment rate has not been increased for four years.

A review of preliminary information pertaining to the upcoming fiscal period indicates that the grower price for tart cherries for the 2010–2011 season could range between \$0.15 and \$0.20 per pound. Therefore, the estimated assessment revenue for the 2010–2011 fiscal period is expected to range between 3.75 and 5 percent of grower revenue.

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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on May 27, 2010 (75 FR 29684). Copies of the proposed rule were also mailed or sent via facsimile to all tart cherry handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the **Federal Register**. A 60-day comment period ending July 26, 2010, was provided for interested persons to respond to the proposal. No comments were 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter 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 2010–2011 fiscal period begins October 1, 2010, 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 and the Board incurs expenses on a continuing basis. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 60-day comment period was provided for 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 October 1, 2010, the assessment rate imposed on handlers shall be \$0.0075 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 cost of the research and promotion program and \$0.0025 per pound of

cherries to cover administrative expenses.

Dated: September 13, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–23336 Filed 9–17–10; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Parts 1 and 602**

[Docket No. TD–9497]

**RIN 1545–BI97**

#### **Guidance Regarding Deferred Discharge of Indebtedness Income of Corporations and Deferred Original Issue Discount Deductions**

##### *Correction*

In rule document 2010–20060 beginning on page 49394 in the issue of Friday, August 13, 2010 make the following corrections:

1. On page 49397, in the third column, the heading should read “2. Exception for Distributions and Charitable Contributions Consistent with Historical Practice —In General”.
2. On page 49400, in the third column, in the second full paragraph, in line six “occurring prior to August 11, 2010 by taking a return position consistent with these provisions” should read “occurring prior to August 11, 2010, by taking a return position consistent with these provisions”.

#### **§1.108(i)–0T [Corrected]**

3. On page 49402, in the second column, (b)(2)(i), on the fifth line, “2010 However, an electing corporation ” should read “2010. However, an electing corporation”.

#### **§1.108(i)–1T [Corrected]**

4. On page 49403, in the first column, (b)(2)(B)(iv), in line six “deemed dividend all the earnings and” should read “deemed dividend the all earnings and”.

[FR Doc. C1–2010–20060 Filed 9–17–10; 8:45 am]

**BILLING CODE 1505–01–D**

## **OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

### **32 CFR Part 1701**

#### **Privacy Act Systems of Records**

**AGENCY:** Office of the Director of National Intelligence.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Director of National Intelligence (ODNI) is issuing a final rule exempting fourteen (14) new systems of records from subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k). The ODNI published a notice and a proposed rule implementing these exemptions on April 2, 2010. The enumerated exemptions will be invoked on a case-by-case basis, as necessary to preclude interference with investigatory, intelligence and counterterrorism functions and responsibilities of the ODNI. This document addresses comments received regarding the proposed rule as applied to the fourteen new systems of records.

**DATES:** This final rule is effective September 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Hackett, Director, Information Management, 703–275–2215.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 2, 2010, the Office of the Director of National Intelligence (ODNI) published notice of fourteen new Privacy Act systems of records: Manuscript, Presentation and Resume Review Records (ODNI–01), Executive Secretary Action Management System Records (ODNI–02), Public Affairs Office Records (ODNI–03), Office of Legislative Affairs Records (ODNI–04), ODNI Guest Speaker Records (ODNI–05), Office of General Counsel Records (ODNI–06), Analytic Resources Catalog (ODNI–07), Intelligence Community Customer Registry Records, (ODNI–09), EEO and Diversity Office Records (ODNI–10), Office of Protocol Records (ODNI–11), IC Security Clearance and Access Approval Repository (ODNI–12), Security Clearance Reform Research Records (ODNI–13), Civil Liberties and Privacy Office Complaint Records (ODNI–14), National Intelligence Council Consultation Records (ODNI–15). These systems of records contain records that range from Unclassified to Top Secret. Accordingly, in conjunction with publication of these systems notices, the ODNI initiated a rulemaking to exempt the systems, in relevant part, from various provisions of the Privacy