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are handled in accordance with paragraph (a)(3) of this section:

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided,* That such apricots of the Moorpark variety in open containers shall be generally well matured.

(2) *Minimum size requirements.* Such apricots measure not less than 1 5/8 inches in diameter except that apricots of the Blenheim, Blenril, and Tilton varieties may measure not less than 1 1/4 inches: *Provided,* That not more than 10 percent, by count, of such apricots may fail to meet the applicable minimum diameter requirements.

(3) Notwithstanding any other provision of this section, any individual shipment of apricots which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of §922.41 (Assessments), and of §922.55 (Inspection and Certification):

(i) The shipment consists of apricots sold for home use and not for resale;

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of apricots; and

(iii) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

(b) The terms *diameter* and *Washington No. 1* shall have the same meaning as when used in the State of Washington Department of Agriculture Standards for Apricots, effective May 31, 1966; *reasonably uniform in color* means that the apricots in the individual container do not show sufficient variation in color to materially affect the general appearance of the apricots; and *generally well matured* means that with respect to not less than 90 percent, by count, of the apricots in any lot of containers, and not less than 85 percent, by count, of such apricots in any container in such lot, at least 40 percent of the surface area of the fruit is at least as yellow as Shade 3 on U.S. Department of Agriculture Standard

Ground Color Chart of Apples and Pears in Western States.

[46 FR 38668, July 29, 1981, as amended at 54 FR 26186, June 22, 1989; 60 FR 32430, June 22, 1995; 61 FR 30497, June 17, 1996; 75 FR 72935, Nov. 29, 2010]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .322 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Subpart—Order Regulating Handling

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923.322 Washington cherry handling regulation.

AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 22 FR 3835, June 1, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 923.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 923.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937,

as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 923.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 923.4 Production area.

Production area means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

[66 FR 58356, Nov. 21, 2001]

§ 923.5 Cherries.

Cherries means all varieties of sweet cherries grown in the production area, classified botanically as *Prunus avium*.

§ 923.6 Varieties.

Varieties means and includes all classifications or subdivisions of *Prunus avium*.

§ 923.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 923.8 Committee.

Committee means the Washington Cherry Marketing Committee established pursuant to § 923.20.

§ 923.9 Grade.

Grade means any one of the officially established grades of cherries as defined and set forth in:

(a) United States Standards for Sweet Cherries (§§ 51.2646 to 51.2660 of this title) or amendments thereto, or modifications thereof, or variations based thereon;

(b) Standards for sweet cherries issued by the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 923.10 Size.

Size means the greatest diameter, measured through the center of the cherry, at right angles to a line running from the stem to the blossom end,

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or such other specification as may be established by the committee with the approval of the Secretary.

§ 923.11 Grower.

Grower is synonymous with producer and means any person who produces cherries for market and who has a proprietary interest therein.

§ 923.12 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting cherries owned by another person) who handles cherries.

§ 923.13 Handle.

Handle and *ship* are synonymous and mean to sell, consign, deliver, or transport cherries or cause the sale, consignment, delivery, or transportation of cherries or in any other way to place cherries, or cause cherries to be placed, in the current of the commerce from any point within the production area to any point outside thereof: *Provided*, That the term *handle* shall not include the transportation within the production area of cherries from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such cherries to such packing facility for such preparation.

§ 923.14 District.

District means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 923.31(m):

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

[22 FR 3835, June 1, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 66 FR 58356, Nov. 21, 2001]

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§ 923.15 Export.

Export means to ship cherries beyond the continental boundaries of the United States.

§ 923.16 Pack.

Pack means the specific arrangement, size, weight, count, or grade of a quantity of cherries in a particular type and size of container, or any combination thereof.

§ 923.17 Container.

Container means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of cherries.

ADMINISTRATIVE BODY

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of sixteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Ten of the members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as "grower members" of the committee; and the six members of the committee who shall be handlers, or officers or employees of handlers, are referred to in this part as "handler members" of the committee. Five of the grower members and their respective alternates shall be producers of cherries in District 1, and five of the grower members and their respective alternates shall be producers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their respective alternates shall be handlers of cherries in District 2.

[22 FR 3835, June 1, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 66 FR 58356, Nov. 21, 2001]

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§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

[70 FR 44252, Aug. 2, 2005]

§ 923.22 Nomination.

(a) *Initial members.* Nominations for each of the ten initial grower members and five initial handler members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified, in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 923.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly

ly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces cherries. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of cherries, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles cherries. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of cherries, such person may vote either as a grower or as a handler but not as both.

§ 923.23 Selection.

From the nominations made pursuant to § 923.22, or from other qualified persons, the Secretary shall select the ten grower members of the committee, the five handler members of the committee, and an alternate for each member.

§ 923.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 923.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 923.20.

§ 923.25 Acceptance.

Any person prior to selection as a member or an alternate member of the

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committee shall qualify by filing with USDA a written acceptance of willingness to serve on the committee.

[66 FR 58356, Nov. 21, 2001]

§ 923.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 923.22 and 923.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 923.20.

§ 923.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member of the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 923.30 Powers.

The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;
- (c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

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- (d) To recommend to the Secretary amendments to this part.

§ 923.31 Duties.

The committee shall have, among others, the following duties:

- (a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;
- (b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;
- (c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;
- (d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;
- (e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;
- (f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;
- (g) To act as intermediary between the Secretary and any grower or handler;
- (h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;
- (i) To submit to the Secretary such available information as he may request;
- (j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;
- (k) To give the Secretary the same notice of meetings of the committee as is given to its members;
- (l) To investigate compliance with the provisions of this part;
- (m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation

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of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in cherry production within the districts and the production area.

§ 923.32 Procedure.

(a) Twelve members of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require the concurring vote of at least nine members.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 923.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed \$10 per day or portion thereof spent in performing such duties: *Provided*, That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 923.34 Annual report.

The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to

each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the cherry industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 923.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 923.41.

§ 923.41 Assessments.

(a) Each person who first handles cherries shall, with respect to the cherries so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of cherries handled by him as the first handler thereof during the applicable fiscal period and the total quantity of cherries so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part

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of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by USDA as recommended by the committee.

[22 FR 3835, June 1, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 66 FR 58356, Nov. 21, 2001.]

§ 923.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraph (a)(2) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provi-

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sions of this part. Such reserve may also be used by the committee to finance its operations, during any fiscal period, prior to the time that assessment income is sufficient to cover such expenses; but any of the reserve funds so used shall be returned to the reserve as soon as assessment income is available for this purpose. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

§ 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

[70 FR 44252, Aug. 2, 2005]

RESEARCH

§ 923.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide

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for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of cherries. The expense of such projects shall be paid from funds collected pursuant to § 923.41.

REGULATIONS

§ 923.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 923.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

- (1) The estimated total production of cherries within the production area;
- (2) The expected general quality and size of cherries in the production area and in other areas;
- (3) The expected demand conditions for cherries in different market outlets;
- (4) The expected shipments of cherries produced in the production area and in areas outside the production area;
- (5) Supplies of competing commodities;
- (6) Trend and level of consumer income;
- (7) Other factors having a bearing on the marketing of cherries; and
- (8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for cherries, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 923.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of

any variety or varieties of cherries in the manner provided in § 923.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for cherries during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 923.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cherries whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

- (1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cherries grown in any district or districts of the production area;
- (2) Limit the shipment of cherries by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;
- (3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

[22 FR 3835, June 1, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 66 FR 58356, Nov. 21, 2001]

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§ 923.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 923.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 923.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 923.41, 923.52, 923.53, and 923.55, and the regulations issued thereunder, handle cherries (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 923.41, § 923.52, § 923.53, or § 923.55, the handling of cherries in such minimum quantities, or types of shipments, or for such specified purposes, as the committee, with approval of the Secretary, may prescribe. Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

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(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent cherries handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cherries pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cherries will not be used for any purpose not authorized by this section. The committee may rescind or deny to any packing facility the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were handled contrary to the provisions of this section.

[22 FR 3835, June 1, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 66 FR 58356, Nov. 21, 2001]

§ 923.55 Inspection and certification.

Whenever the handling of any variety of cherries is regulated pursuant to § 923.52 or § 923.53, each handler who handles cherries shall, prior thereto, cause such cherries to be inspected by the Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cherries.

REPORTS

§ 923.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at

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such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of each variety of cherries received by a handler;

(2) The quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such cherries, and

(4) The destination of each shipment of such cherries.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the cherries received, and of cherries disposed of, by such handler as may be necessary to verify reports pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 923.61 Compliance.

Except as provided in this part, no person shall handle cherries, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part: And no person shall handle cherries except in conformity with the provisions of this part.

§ 923.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Sec-

retary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 923.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 923.64.

§ 923.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of growers who, during a representative period, have been engaged in the production of cherries: *Provided*, that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by growers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

(e) The provisions of this part shall, in any event, terminate whenever the

§ 923.65

provisions of the act authorizing them cease to be in effect.

[22 FR 3835, June 1, 1957, as amended at 70 FR 44252, Aug. 2, 2005]

§ 923.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 923.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

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§ 923.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 923.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 923.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 923.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission, or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 923.71 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 923.142 Reserve fund.

(a) The establishment of a reserve fund of an amount which shall not exceed approximately 1 fiscal year's operational expenses is appropriate and

necessary to the maintenance and functioning of the Washington Cherry Marketing Committee. The committee is authorized to expend any funds in such reserve for expenses authorized pursuant to §923.42.

(b) Terms used in this section shall have the same meaning as given to the respective term in said marketing agreement and order.

[33 FR 9147, June 21, 1968. Redesignated at 44 FR 73011, Dec. 17, 1979]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .323 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

ASSESSMENT RATE

§ 923.236 Assessment rate.

On and after April 1, 2007, an assessment rate of \$0.40 per ton is established for the Washington Cherry Marketing Committee.

[72 FR 44369, Aug. 8, 2007]

GRADE, SIZE, CONTAINER AND PACK REGULATION

§ 923.322 Washington cherry handling regulation.

(a) *Grade.* No handler shall handle, except as otherwise provided in this section, any lot of cherries, except cherries of the Rainier, Royal Anne, and similar varieties, commonly referred to as "light sweet cherries" unless such cherries grade at least Washington No. 1 grade except that the following tolerances, by count, of the cherries in the lot shall apply in lieu of the tolerances for defects provided in the Washington State Standards for Grades of Sweet Cherries: *Provided*, That a total of 10 percent for defects including in this amount not more than 5 percent, by count, of the cherries in the lot, for serious damage, and including in this latter amount not more than one percent, by count, of the cherries in the lot, for cherries affected by decay: *Provided further*, That the contents of individual packages in the

lot are not limited as to the percentage of defects but the total of the defects of the entire lot shall be within the tolerances specified.

(b) *Size.* No handler shall handle, except as otherwise provided in this section, any lot of cherries unless such cherries meet the following minimum size requirements:

(1) For the Rainier variety and similar varieties commonly referred to as "lightly colored sweet cherries," at least 90 percent, by count, of the cherries in any lot shall measure not less than $\frac{61}{64}$ -inch in diameter and not more than 5 percent, by count, may be less than $\frac{57}{64}$ -inch in diameter.

(2) For all other varieties, at least 90 percent, by count, of the cherries in any lot shall measure not less than $\frac{54}{64}$ inch in diameter and not more than 5 percent, by count, may be less than $\frac{52}{64}$ inch in diameter.

(c) *Maturity.* No handler shall handle, except as otherwise provided in this section, any lot of Rainier cherries or other varieties of "lightly colored sweet cherries" unless such cherries meet a minimum of 17 percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment: *Provided*, That individual lots shall not be combined with other lots to meet soluble solids requirements.

(d) *Pack.* (1) When containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
8	$\frac{84}{64}$
$8\frac{1}{2}$	$\frac{79}{64}$
9	$\frac{75}{64}$
$9\frac{1}{2}$	$\frac{71}{64}$
10	$\frac{67}{64}$

TABLE—Continued

Column 1, row count/row size	Column 2 diameter (inches)
10½	6¼/64
11	61/64
11½	57/64
12	5¼/64

(2) When containers of cherries are marked with a minimum diameter, at least 95 percent, by count, of the cherries in any lot and at least 90 percent, by count, of the cherries in any container, shall be not smaller than such minimum diameter.

(e) *Light sweet cherries marked as premium.* No handler shall handle, except as otherwise provided in this section, any package or container of Rainier cherries or other varieties of lightly colored sweet cherries marked as premium except in accordance with the following:

(1) *Quality.* 90 percent, by count, of such cherries in any lot must exhibit a pink-to-red surface blush and, for any given sample, not more than 20 percent of the cherries shall be absent a pink-to-red surface blush.

(2) *Pack.* At least 90 percent, by count, of the cherries in any lot shall measure not less than 6¼/64 inch (10½ row) in diameter and not more than 5 percent, by count, may be less than 61/64 inch (11-row) in diameter.

(f) *Grading or packing cherries outside the production area.* (1) Persons desiring to ship or receive cherries for grading or packing outside the production area shall apply to the committee on a “Shippers/Receivers Application for Special Purpose Shipment Certificate” form, and receive approval from the Committee. The application shall contain the following: (i) Name, address, telephone number, and signature of applicant;

(ii) Certification by the applicant that cherries graded and packed outside the production area shall be inspected by the Federal-State Inspection Service and shall meet the grade, size, maturity, and pack requirements of this section prior to shipment; and

(iii) Such other information as the committee may require.

(2) Each approved applicant shall furnish to the committee, at the close of business every Friday, a report con-

taining the following information on a “Special Purpose Shipment Report” form:

(i) Name, address, telephone number, and signature of applicant;

(ii) Names of growers and handlers of such cherries;

(iii) The total quantity of each variety of cherries; and

(iv) Such other information as the committee may require.

(3) The committee may rescind or deny to any applicant its approval of the “Shippers/Receivers Application for Special Purpose Shipment Certificate” if proof satisfactory to the committee is obtained that any cherries shipped or received by such applicant for grading or packing were handled contrary to the provisions of this section.

(g) *Exceptions.* Any individual shipment of cherries which meets each of the following requirements may be handled without regard to the provisions of paragraphs (a), (b), (c), (d), and (e) of this section, and of §§923.41 and 923.55.

(1) The shipment consists of cherries sold for home use and not for resale;

(2) The shipment does not, in the aggregate, exceed 100 pounds, net weight, of cherries; and

(3) Each container is stamped or marked with the words *not for resale* in letters at least one-half inch in height.

(h) *Definitions.* When used herein, *Washington No. 1* and *diameter* shall have the same meaning as when used in the Washington State Standards for Grades of Sweet Cherries (Order 1550 effective April 29, 1978, WAC 16-414-050); *face packed* means that cherries in the top layer in any container are so placed that the stem ends are pointing downward toward the bottom of the container; *row count/row size* means the number of cherries of a uniform size necessary to pack row-faced across a 10½ inch inside width container or comparable number of cherries when packed loose in a container.

[47 FR 31538, July 21, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §923.322, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Agricultural Marketing Service, USDA

§ 925.6

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTH-EASTERN CALIFORNIA

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- 925.66 Duration of immunities.
- 925.67 Derogation.
- 925.68 Personal liability.
- 925.69 Separability.

DEFINITIONS

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- 925.2 Act.
- 925.3 Person.
- 925.4 Grapes.
- 925.5 Production area.
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- 925.7 Producer.
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ADMINISTRATIVE BODY

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- 925.112 Fiscal period.
- 925.141 Late payments.
- 925.160 Reports.

Subpart—Assessment Rates

- 925.215 Assessment rate.
- 925.304 California Desert Grape Regulation 6.

AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 45 FR 40566, June 16, 1980, unless otherwise noted.

DEFINITIONS

§ 925.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ 925.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 925.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 925.4 Grapes.

Grapes means any variety of vinifera species table grapes grown in the production area.

§ 925.5 Production area.

Production area means Imperial County, California, and that part of Riverside County and San Diego County, California, situated east of a line drawn due north and south through the Post Office in White Water, California.

§ 925.6 Varieties.

Varieties means and includes all classifications or subdivisions of *Vitis vinifera* table grapes.