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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV06–923–2 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Decreased Assessment Rate

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 which decreased the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2006–2007 and subsequent fiscal periods from $0.75 to $0.50 per ton for Washington sweet cherries handled. The Committee locally administers the marketing order regulating the handling of sweet cherries grown in designated counties in Washington. Assessments upon sweet cherry handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

DATES: *Effective Date:* October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; telephone number (503) 326–2724, fax number (503) 326–7440, or e-mail address *Robert.Curry@usda.gov* or *GaryD.Olson@usda.gov.*

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 number (202) 720–2491, fax number (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 923 (7 CFR part 923), as amended, 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.''

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 now in effect, cherry handlers in designated counties in Washington 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 Washington sweet cherries beginning April 1, 2006, and continue until amended, suspended, or terminated. 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. 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 continues in effect the action that decreased the assessment rate established for the Committee for the 2006–2007 and subsequent fiscal periods from $0.75 to $0.50 per ton for Washington sweet cherries handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expense and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of sweet cherries in designated counties in Washington. They are familiar with the Committee'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 at a public meeting. All directly affected persons have an opportunity to participate and provide input.

For the 2004–2005 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of $0.75 per ton of sweet cherries handled. This rate continued in effect until modified herein based on the recommendation and supporting information submitted by the Committee.

The Committee met on May 3, 2006, and unanimously recommended 2006–2007 expenditures of $49,800 and a decreased assessment rate of $0.50 per ton of cherries. In comparison, last year's budgeted expenditures were $72,297. The assessment rate of $0.50 is $0.25 lower than the rate previously in effect. Due to an anticipated decrease in operating expenses this year, the Committee recommended the assessment rate decrease to maintain the level of income near the level of expenses.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington sweet cherries. Applying the $0.50 per ton rate of assessment to the Committee's 110,000 ton crop estimate should provide $55,000 in assessment income. Thus, income derived from handler assessments will be adequate to cover the recommended 2006–2007 budget of $49,800.

The Committee's budget of expenditures for the 2006–2007 period

reflect a significant reduction in overall cost from previous years. This occurred, in part, because the Committee hired an outside management services agency to more efficiently handle the Committee's administrative matters. Major expenses recommended by the Committee for the 2006–2007 year include administration and data management fees totaling $25,000, Committee expenses of $16,200 (which includes travel, accounting and compliance), and office expenses—including bonds, insurance, telephone, office equipment and supplies—of $7,100.

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 Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee 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 the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2006–2007 budget has been reviewed and approved by USDA; those for subsequent fiscal periods will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,500 cherry producers within the regulated production area and approximately 53 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

The Washington Agricultural Statistics Service prepared a preliminary report for the 2005 shipping season showing that the total 113,000 ton fresh market sweet cherry utilization sold for an average of $2,830 per ton. Based on 1,500 producers in the production area, the average producer revenue from the sale of sweet cherries in 2005 is estimated at approximately $213,200 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than $6,500,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2006–2007 and subsequent fiscal periods from $0.75 to $0.50 per ton for sweet cherries. The Committee unanimously recommended 2006–2007 expenditures of $49,800. With the 2006–2007 crop estimate of 110,000 tons for fresh sweet cherries, the Committee anticipates assessment income of $55,000.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because of the uncertainty of the crop size estimate.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2006–2007 season could average about $2,830 per ton for fresh Washington sweet cherries. Therefore, the estimated assessment revenue for the 2006–2007 fiscal period as a percentage of total producer revenue is 0.018 percent for Washington sweet cherries.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington sweet cherry industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the May 3, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on the issues.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule regarding this action was published in the **Federal Register** on June 19, 2006 (71 FR 35145). Copies of that rule were made available to handlers and other interested parties by the Committee. The interim final rule was also made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on August 18, 2006, and 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/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber 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 Committee 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.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 923 which was

published at 71 FR 35145 on June 19, 2006, is adopted as a final rule without change.

Dated: September 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–7866 Filed 9–21–06; 8:45 am]

BILLING CODE 3410–02–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB59

Requests for Reconsideration and Appeals Within the Board

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to include video teleconferencing as an option for hearings of appeals under the Railroad Retirement Act and Railroad Unemployment Insurance Act. The Board's hearings officers will determine if a hearing should be scheduled using this option, rather than a telephone conference call hearing or an in person hearing.

DATES: *Effective Date:* This regulation will be effective September 22, 2006.

ADDRESSES: Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 260 of the Board's regulations deals generally with administrative review of denials of claims or requests for waiver of recovery of overpayments under the Railroad Retirement Act (RRA). Part 320 deals with the same matters under the Railroad Unemployment Insurance Act (RUIA). The Board amends these parts to state that, at the discretion of the hearings officer, hearings held during the appeal process may be conducted in person, by telephone conference call, or by video teleconferencing. Previously, the regulations only allowed for hearings to be held in person or by telephone conference call.

Specifically, the Board amends §§ 260.5(i) and 320.22 to state that a proposed hearing may be held in person, by telephone conference call, or by video teleconferencing. These sections also state that if an individual objects to having a hearing by video teleconferencing, the hearings officer will find the individual had good cause for objecting to the time or place of the hearing and will reschedule the individual for either a telephone or an in person hearing for the appeal. The regulation also amends §§ 260.5(1) and 320.25 to state that the hearings officer determines whether a hearing is scheduled for a telephone conference call, video teleconferencing, or in person.

The Board published the proposed rule on December 9, 2005 (70 FR 73175) and invited comments by February 7, 2006. No comments were received. Accordingly, the proposed rule is being published as a final rule without change.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no changes to the information collections associated with parts 260 and 320.

List of Subjects

20 CFR Part 260

Administrative practice and procedure, Claims, Railroad retirement, Reporting and recordkeeping requirements.

20 CFR Part 320

Administrative practice and procedure, Claims, Railroad unemployment insurance, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, Chapter II, subchapter B, part 260 and subchapter C, part 320 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f: 45 U.S.C. 231g; 45 U.S.C. 355.

■ 2. Revise paragraphs (i)(1), (i)(3) and (1) of § 260.5 to read as follows:

§ 260.5 Appeal from a reconsideration decision.

* * * * *

(i) Conduct of an oral hearing. (1) In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. At the discretion of the hearings officer, any hearing required under this part may be held in person, by telephone conference call, or by video teleconferencing as described in § 260.5(1). The hearing shall not be open to the public. The hearings officer shall promptly notify by mail the party or parties to the proceeding as to the time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

* * * * *

(3) The hearings officer shall rule on any objection timely filed by a party under paragraph (i) of this section and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. If an individual objects to having a hearing by video teleconferencing, the hearings officer will find the individual's wish not to appear by video teleconferencing to be a good reason for changing the time or place of the scheduled hearing and will reschedule the hearing for a time or place where either a telephone conference call or an in person hearing will be held. The hearings officer may also limit or expand the issues to be resolved at the hearing.

* * * * *

(1) Hearing by telephone or video teleconferencing. As stated in paragraph (i)(1) of this section, at the discretion of the hearings officer, any hearing required under this part may be conducted in person, by telephone conference call, or by video teleconferencing. The hearings officer may determine the hearing should be conducted by telephone conference call or video teleconferencing if use of these methods would be more efficient than conducting an in person hearing and the hearings officer does not determine that there is a circumstance in the particular case preventing the use of these methodologies to conduct the hearing.

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PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

■ 3. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

■ 4. Add a sentence to the beginning of paragraph (a) and revise paragraph (c) of § 320.22 to read as follows: