

Agricultural Marketing Service, USDA

§ 923.322

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 on GPO Access.

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 $\frac{6}{64}$ -inch in diameter and not more than 5 percent, by count, may be less than $\frac{5}{64}$ -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 $\frac{5}{64}$