

Agricultural Marketing Service, USDA

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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 $\frac{5}{64}$

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inch in diameter and not more than 5 percent, by count, may be less than 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) [Reserved]

(e) *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	84/64
8½	79/64
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

(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.

(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 containing 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), 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

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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, as amended at 49 FR 27135, July 2, 1984; 51 FR 23040, June 25, 1986; 51 FR 29210, Aug. 15, 1986; 52 FR 20382, June 1, 1987; 58 FR 30698, May 27, 1993; 59 FR 31920, June 21, 1994; 60 FR 66859, Dec. 27, 1995; 64 FR 33743, June 24, 1999; 64 FR 53885, Oct. 5, 1999; 68 FR 15926, Apr. 2, 2003; 70 FR 7001, Feb. 10, 2005; 70 FR 7001, Feb. 10, 2005; 71 FR 17982, Apr. 10, 2006]

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AUTHORITY: 7 U.S.C. 601–674.

SOURCE: 25 FR 6350, July 7, 1960, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 924.1 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