

§ 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 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 disburse-

ments 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.

§ 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

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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 $\frac{57}{64}$ -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 $\frac{54}{64}$