



1400 Independence Avenue, SW.
Room 2077-S, STOP 0235
Washington, D.C. 20250-0235

Ms. Mollie Woods
Executive Director
Cherry Industry Administrative Board
12800 Escanaba Drive
Suite A
DeWitt, Michigan 48820-0388

Dear Ms. Woods:

I am writing to explain the appropriate steps for the Cherry Industry Administrative Board (Board) to take moving forward following the U.S. District Court's decision affecting the Federal marketing order for tart cherries. We must move forward together to protect the integrity of the marketing order and the Board's upcoming nominations.

The Board is prohibited by 7 C.F.R. § 930.20(g) from seating multiple members who are affiliated with the same sales constituency within each district, unless such a conflict is unavoidable. The District Court's decision in *Burnette Foods, Inc. v. the U.S. Department of Agriculture* (USDA) held that CherrCo, a federated grower cooperative, is a "sales constituency" as defined by the marketing order. The Court also determined that the prohibition on seating multiple members affiliated with the same sales constituency in 7 C.F.R. § 930.20(g) should apply to alternate members. With this ruling, the Board can seat only one member or alternate member affiliated with a single sales constituency per district, unless such a conflict is unavoidable.

Based on our review of the decision, USDA has determined that the Board must be reconstituted to comply with the Court's decision. The Board is not authorized to meet, develop recommendations, or undertake any other actions on behalf of the industry until USDA appoints new members and alternates to certain positions based on industry nominations. You must conduct new nominations, so the Board can reconvene to continue fulfilling the purpose of the marketing order. The Board cannot recommend any new rulemaking actions until a new Board is seated. The rulemaking related to exemption requirements and handling percentages already in USDA channels will continue moving forward for publication in the Federal Register.

In your undated letter we received on April 10, 2018, you expressed concerns regarding how to interpret and apply the Court's ruling. When determining a particular handler's sales constituency, the nominated individual should list all sales constituencies with which they are affiliated. Similarly, nominated growers should list all handlers or sales constituencies to which they sold product. USDA recognizes growers and handlers have affiliations with multiple buyers; however, Board staff needs to be cognizant of these agreements.

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It is imperative that you and your staff document and verify the outreach you perform to ensure members and their corresponding alternates are not affiliated with the same sales constituency. Further, you should document all attempts to seek nominations from members with varying sales constituency affiliations. If and when no option exists but to seat two or more members or alternates affiliated with a single sales constituency within a district, we require an explanation of the nomination[s] and a description of the efforts made to foster awareness of the opportunity to serve on the Board to members of various sales constituencies.

During the nomination process, we require all members and alternates being nominated, in addition to all existing members and alternates, to complete an SC-46 Background/Acceptance Statement for Producers and Handlers and an SC-48 Tart Cherry Nomination Petition Form to verify their affiliations and business partners in compliance with the marketing order. My staff is reviewing each form for addition of language that explains the sales constituency matter. We will work in the coming days to obtain the Office of Management and Budget's approval of the revised forms, and will keep you informed of the changes and our progress in the approval process.

Staff of our Southeast Marketing Field Office will work with you to identify Board positions that need to be reseeded. We are available to discuss with you the necessary steps we must take now and in the future.

Sincerely,

Sonia N. Jimenez
Deputy Administrator

CC: Vincent Fusaro, Acting Director, Marketing Order and Agreement Division
Michelle Sharrow, Deputy Director, Marketing Order and Agreement Division
Chris Nissen, Regional Director, Marketing Order and Agreement Division
Charles Stephens, Associate Deputy Administrator, Specialty Crops Program
Bruce Summers, Acting Administrator, Agricultural Marketing Service

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