

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the marketplace. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of the industry that season was that the absence of tray weights had no negative impact during the 1998–1999 season due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting, unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season to evaluate the suspended requirements during a season when the fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010).

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season, the Committee voted to suspend the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee once again unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. This suspension was implemented by a final rule issued June 14, 2000 (65 FR 37265) and is in effect until July 31, 2001.

The 2000–2001 season was normal and enabled the Committee to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. The Committee and the Federal-State Inspection Service also have concluded that removing the minimum tray weight requirements would not result in a reduction in inspection costs as the inspection process is essentially the same. The Committee, at its February 28, 2001, meeting, unanimously recommended removing paragraph (a)(4)(iii) of § 920.302 for the 2001–2002 and all future seasons. The Committee also noted that the minimum size requirement should be maintained on all kiwifruit regardless of pack style.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interests of

handlers, growers, buyers, and consumers. The impact of these changes is expected to be beneficial to all handlers and growers regardless of size.

The Committee discussed alternatives to this change, including continuing the temporary suspensions for another year. The industry believes that it has had adequate time to evaluate these changes. The suspensions helped handlers reduce packing costs and compete more effectively in the marketplace without an adverse affect on quality or appearance of the fruit. Therefore, the Committee recommended removal of §§ 920.155 and 920.302(a)(4)(iii) for the 2001–2002 and future seasons.

This proposed rule would relax inspection and pack requirements under the kiwifruit marketing order.

Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit 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.

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

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 28, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The majority of the industry are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place by August 1, 2001, as the current suspensions expire on July 31, 2001, and handlers need to make operational decisions in time for the 2001–2002 season. All written comments timely received will be

considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.155 [Removed]

2. In part 920, § 920.155 is removed in its entirety.

§ 920.302 [Amended]

3. In § 920.302, paragraph (a)(4)(iii) is removed and paragraphs (a)(4)(iv), (v), and (vi) are redesignated as paragraphs (a)(4) (iii), (iv), and (v), respectively.

Dated: May 9, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–4 PR]

Tart Cherries Grown in the States of Michigan, et al.; Temporary Suspension of a Provision Regarding a Continuance Referendum Under the Tart Cherry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule requests comments on the temporary suspension of an order provision which requires a continuance referendum to be conducted on the marketing order for tart cherries during March 2002. The proposed suspension would enable the U.S. Department of Agriculture (USDA or Department) to postpone conducting the continuance referendum until the completion of amendatory order proceedings. The Cherry Industry Administrative Board (Board) recommended a delay in holding the continuance referendum to allow the industry to evaluate the results of any approved amendments. A continuance

referendum in March of 2003 is planned.

DATES: Comments must be received by July 16, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Fax: (202) 720-5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at the following website: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland, 20737, telephone: (301) 734-5243; Fax: (301) 734-5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 720-2491; Fax: (202) 720-5698.

Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 930 (7 CFR part 930) (order) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Washington, and Wisconsin. 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."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 the Secretary 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This action would temporarily suspend the provision in § 930.83(d) of the order which specifies when a continuance referendum should be conducted to determine if producers and processors favor continuance of the tart cherry marketing order. This action was unanimously recommended by the Committee at its January 25, 2001, meeting.

Section 930.83(d) of the order currently provides that the Secretary shall conduct a referendum within the month of March every six years after the order became effective to ascertain whether continuance of the order is favored by tart cherry producers and processors. The order became effective in September 1996. A continuance referendum is, therefore, scheduled to be conducted in March 2002.

Section 930.83(b) authorizes the Secretary to terminate or suspend the operation of any or all provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

In 1998, the Board recommended several proposed amendments to the tart cherry marketing order to improve the administration of the order and more accurately reflect how the program is operated. It also requested that public hearings be held on the proposed amendments. The amendatory process can be lengthy depending on the complexity of the amendments and the level of support for the amendments.

Under the applicable rules of practice (7 CFR part 900), the amendment process consists of several steps. The first step is the public hearing at which evidence (pro and con) is presented on the recommended amendments. After the public hearings are completed, a Recommended Decision, based on the evidence presented, is issued by the Department, with a request for written

comments. Next, the Department considers the evidence of record including any exceptions to the Recommended Decision and then issues a Secretary's Decision and, if warranted, a Referendum Order. A Referendum Order would be issued if the Secretary determines that the amendments to the order would tend to effectuate the declared policy of the Act.

Initially, the Board intended to proceed with all of its proposed amendments in a single amendatory proceeding. However, after discussion with the Department, the Board agreed to split its proposed amendments to the order into two proceedings. The less complex amendments were handled first followed by the more complex amendments. An amendment referendum for the first series of amendments was held in January 2001. The formal rulemaking process for the second series of amendments, has begun, and is expected to be completed in the spring of 2002.

The Board recommended that the provision requiring the March 2002 continuance referendum be temporarily suspended to allow the Department to complete the amendatory proceedings. The temporary suspension would allow the Department to postpone the next continuance referendum for the tart cherry marketing order until March 2003.

Delaying the continuance referendum would allow for the completion of the amendatory proceedings and an evaluation by the industry on any approved amendments at least a year before producers and processors are asked to vote on continuing the order. A later continuance referendum should be a better indicator of the support for the order.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of

regulatory options and economic impacts.

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 rules 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 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

This proposed rule would temporarily suspend the provision in § 930.83(d) of the order which specifies the month in which a continuance referendum should be conducted to determine if producers and processors favor the continuance of the tart cherry marketing order. Pursuant to this, the next continuance referendum is scheduled for March 2002. Section 930.83(b) authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

One alternative to this action would be to continue the status quo. However, without a postponement of the continuance referendum, the Department would have to conduct two referenda closely together, one for the second series of amendments and one for a continuance referendum. This could be confusing to growers and processors. Further, growers and processors would not have had time to determine how any amendments that are adopted could affect order operations and evaluate the results. A temporary delay in holding the continuance referendum until March 2003 would allow the amendments to be evaluated by growers and processors. Thus, the vote on continuance would be a more reliable determiner of industry support for the order.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction

Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581-0177. This action imposes no additional reporting or recordkeeping requirements on either small or large tart 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. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Board's meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <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.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 930.83 [Amended]

2. In paragraph (d), the sentence "The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and processors." is suspended effective March 1 through March 31, 2002.

Dated: May 9, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-383-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modifications of route segregation between the low voltage wire bundles of the fuel quantity indicating system and the high voltage wire bundles of the ground power control unit. This action is necessary to prevent injection of 115 volt alternating current (VAC) into 28 volt direct current (VDC) wire bundles, which could result in high voltage conditions within the fuel tank and the potential for damage to equipment, electrical arcing, and fuel vapor ignition on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-383-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232.