

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV03-930-1]

#### Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Continuance Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a continuance referendum be conducted among eligible growers and processors of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin to determine whether they favor continuance of the marketing order regulating the handling of tart cherries grown in the production area.

**DATES:** The referendum will be conducted from March 17 through March 28, 2003. To vote in this referendum, growers and processors must have been engaged in producing or processing tart cherries within the production area during the period July 1, 2001 through June 30, 2002.

**ADDRESSES:** Copies of the marketing order may be obtained from USDA, Washington, DC Marketing Field Office, 4700 River Road, Unit 155, Room 2A38, Riverdale, Maryland 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Regional Manager, Washington, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 4700 River Road Unit 155, Room 2A38, Riverdale,

MD 20737; telephone (301) 734-5243; fax (301) 734-5275; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 1035, Moab, UT 84532; telephone (435) 259-7988; fax (435) 259-4945.

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 930 (7 CFR part 930), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers and processors. The referendum shall be conducted during the period March 10 through March 21, 2003, among eligible tart cherry growers and processors in the production area. Only growers and processors that were engaged in the production or processing of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin during the period of July 1, 2001, through June 30, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers and processors favor continuation of marketing order programs. The USDA would not consider termination of the order if continuance is favored by more than 50 percent of the growers and processors who vote in the referendum provided that they represent more than 50 percent of the volume of produced and processed tart cherries represented in the referendum.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the

Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0177. It has been estimated that it will take an average of 30 minutes for each of the approximately 40 processors and 905 producers of tart cherries in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after March 21, 2003, will be marked invalid and not included in the vote tabulation.

Kenneth G. Johnson, James B. Wendland, Patricia A. Petrella and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et. seq.*)

Ballots will be mailed to all growers and processors of record and may also be obtained from the referendum agents and from their appointees.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

**Authority:** 7 U.S.C. 601-674.

Dated: February 25, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 03-4874 Filed 2-28-03; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Parts 1405 and 1499

#### AGENCY FOR INTERNATIONAL DEVELOPMENT

#### 22 CFR Part 211

RIN 0560-AG49

#### Ocean Freight Claims Administrative Appeal Process

**AGENCIES:** Commodity Credit Corporation, USDA, and Agency for International Development.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish an administrative appeals procedure that would be used by the Commodity Credit Corporation (CCC) with respect to ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under various foreign donation programs. Whether or not title to the commodities has passed from CCC to a cooperating sponsor, which may be a foreign government, private voluntary organization, or private entity, CCC either retains the right or may be assigned the right to initiate, prosecute, and, with certain limited exceptions, retain the proceeds of cargo loss and damage claims. The rule would require that any recipient of CCC-donated commodities must include in the contract for the ocean transportation of the commodities a provision that the maritime carrier agrees to participate in this administrative appeal process.

For CCC claims initiated on behalf of the United States Agency for International Development (USAID), the rule would also require consultations between agencies and the crediting of funds collected into USAID accounts.

**DATES:** Comments must be submitted on or before April 2, 2003, to be assured of consideration.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Steve Mikkelsen, Director, Procurement and Donations Division, USDA/FSA/PDD/STOP 0551, 1400 Independence Avenue, SW., Washington, DC 20250-0551 or sent electronically to: [steve\\_mikkelsen@wdc.fsa.usda.gov](mailto:steve_mikkelsen@wdc.fsa.usda.gov). Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

Comments concerning USAID programs should also be addressed to Lauren Landis, Director, Office of Food For Peace, Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development, Room 7.06-157, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 or sent electronically to: [llandis@usaid.gov](mailto:llandis@usaid.gov).

**FOR FURTHER INFORMATION CONTACT:** Steve Mikkelsen of CCC on (202) 720-5074, or Jeffrey Drummond of USAID on (202) 712-0238.

**SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be not significant.

#### **Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither CCC nor the United States Agency for International Development (USAID) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### **Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

#### **Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

#### **Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, or the private sector, in the aggregate of \$100 million or more in any 1 year. This rule contains no Federal mandates under the regulatory provisions of title II of the UMRA for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Paperwork Reduction Act**

The information collection requirements imposed by this rule have

been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). OMB has assigned control number 0051-0035 for this information collection. This regulation does not change any of the information collection requirements.

#### **Background**

The regulations set forth at 7 CFR part 1499 establish the general terms and conditions governing CCC's donation of commodities to cooperating sponsors under section 416(b) of the Agricultural Act of 1949 and the Food for Progress programs. Under 7 CFR 1499.15(d)(1), notwithstanding the transfer of title, CCC has the right to file, pursue and, with certain exceptions, retain the proceeds from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental cooperating sponsors. Under 7 CFR 1499.15(d)(8), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental cooperating sponsors must also assign their claim rights to CCC upon CCC's request.

The regulations set forth at 22 CFR part 211 establish the general terms and conditions governing the U.S. Agency for International Development's (USAID) food donation programs under title II, Public Law 480. CCC makes the agricultural commodities available to USAID for use in these programs. Under 22 CFR 211.9(c)(2)(i), whether or not title to commodities is transferred from CCC to the cooperating sponsor, if USAID contracted for the ocean transportation, CCC has the right to initiate, prosecute, and retain the proceeds of all claims against maritime carriers for cargo loss and damage arising out of shipments of commodities made available by CCC. Under 22 CFR 211.9(c)(2)(ii)(F), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental sponsors must also assign their claim rights to CCC upon CCC's request.

If the commodity is lost or damaged in transit due to the fault of the carrier, existing admiralty law principles control whether the party contracting for the transportation of the goods may recover damages from the carrier. The provisions of the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*) either

apply by law, or are incorporated by reference into the cargo bookings and charter parties.

CCC does not have an established administrative appeal process to handle the internal review of these cargo claims before the claims are referred to the U.S. Department of Justice for collection through litigation. This rule would establish an administrative appeal process. CCC intends that independent hearing officers would make written determinations with respect to the claims. Once the administrative appeal was completed, if the carrier was determined to be liable for the loss and damage to cargo, CCC would follow the CCC debt settlement policies and procedures set forth in 7 CFR part 1403 to collect the debt. This would include but would not be limited to the administrative offset of the amount of the debt against other freight earned by the carrier which had not been paid or freight earned in the future.

Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354) provides that, notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary of Agriculture before a person may bring an action in a court of competent jurisdiction against the Secretary, the Department of Agriculture, or agency, office, officer or employee of the Department. Therefore, a carrier would have to participate in the administrative appeals procedure before it could file an action in court contesting the establishment of the debt or possible subsequent offset of the debt. The court's review would be limited to the administrative record established in the administrative appeal.

This rule also establishes a consultative process between USAID and CCC for claims pursued under title II, Public Law 480 food donation programs. It also requires CCC to credit the appropriate title II account for any funds collected by or remitted to CCC pursuant to 22 CFR 211.9(c)(2).

#### List of Subjects

##### 7 CFR Part 1405

Administrative practice and procedure, Agricultural commodities, Cargo claims, Cooperating sponsor, Maritime carriers.

##### 7 CFR Part 1499

Agricultural commodities, Cooperating sponsor.

##### 22 CFR Part 211

Agricultural commodities, Cooperating sponsor.

Accordingly, for the reasons set forth in the preamble, CCC proposes to amend 7 CFR parts 1405 and 1499, and USAID proposes to amend 22 CFR part 211 as follows:

#### 7 CFR CHAPTER XIV

#### PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for 7 CFR part 1405 continues to read as follows:

**Authority:** 15 U.S.C. 714(b) and 714(c).

2. Add § 1405.100 to read as follows:

##### § 1405.100 Cargo claims appeal process.

(a) *Applicability.* (1) The administrative appeals process set forth in this section is applicable to all ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under section 416(b) of the Agricultural Act of 1949, the Food for Progress Act of 1985, and Title II of the Agricultural Trade Development and Assistance Act of 1954, commonly known as Public Law 480, and any other regulation or contract that incorporates by reference the provisions of this section. This includes the movement of cargoes under through bills of lading to inland destinations.

(2) This section is applicable to any determination made by CCC relating to the resolution of disputed cargo loss and damage claims between CCC and the maritime carrier.

(b) *Delegations of authority.* (1) The Deputy Vice President, CCC, who is Deputy Administrator for Commodity Operations of the Farm Service Agency (Deputy Administrator), shall be responsible for administering this section. The Deputy Administrator may delegate the authority provided in this section in the manner deemed appropriate by the Deputy Administrator.

(2) The Executive Vice President, CCC, who is the Administrator for the Farm Service Agency, may modify or reverse any action of the Deputy Administrator or a designee of the Deputy Administrator made with respect to this section.

(c) *Appeal procedure.* (1) If CCC determines that a maritime carrier is liable for loss and damage that occurred during the transportation of commodities made available by CCC, CCC will notify the carrier in writing of the nature of the violation. The carrier will be given 30 days in which to appeal the determination to CCC and request

either a hearing before a hearing officer or a hearing by telephone. CCC will provide to the carrier a written acknowledgment of their appeal and request for a hearing.

(2) If the carrier requests to pursue an appeal but not a hearing, CCC will allow the carrier to submit, in writing, the reasons why the carrier believes the determination of CCC to be in error. The carrier will be given 30 days from the receipt of the acknowledgment to file any statements and documents in support of its appeal. The carrier will be given an additional 15 days to respond to any new issues raised by CCC in response to the carrier's initial submission.

(3) If the carrier requests to pursue an appeal and requests a hearing, CCC will notify the carrier of the date of the hearing. All hearings will be held at the Kansas City Commodity Office of the Farm Service Agency, 6501 Beacon Drive, Kansas City, Missouri 64133-4675, except as may be determined by CCC. If a hearing is requested, the carrier will be notified of the date of the hearing and will be afforded 30 days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal. The carrier will be given an additional 15 days following the date of the hearing to submit any additional material that may have been determined necessary due to issues raised at the hearing.

(4) Determinations of the hearing officer shall be final and no further appeal within CCC shall be available except as may be specified in the final determination of the hearing officer.

(d) *Exhaustion of administrative remedy.* A carrier may not initiate an action in any court of competent jurisdiction prior to the exhaustion of the administrative appeal process set forth in this section.

#### PART 1499—FOREIGN DONATION PROGRAMS

3. The authority citation for 7 CFR part 1499 continues to read as follows:

**Authority:** 7 U.S.C. 1431(b), 7 U.S.C. 1736o, E.O. 12752.

4. Amend § 1499.15 by adding paragraph (j) to read as follows:

##### § 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

\* \* \* \* \*

(j) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for the transportation of the commodity made available by CCC: "The provisions

of 7 CFR 1405.100 shall be applicable to this contract and are incorporated by reference in their entirety.”

## 22 CFR CHAPTER II

### PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT AND OTHER ASSISTANCE

5. The authority citation for 22 CFR part 211 continues to read as follows:

**Authority:** Section 207(c) of the Agricultural Trade Development and Assistance Act of 1954, as amended; see Public Law 101-624, 104 Stat. 3632, 3641, 7 U.S.C. 1726a(c).

6. Amend § 211.9 by adding paragraph (c)(2)(v) to read as follows:

#### § 211.9 Liability for loss damage or improper distribution of commodities.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Any funds collected by or remitted to CCC pursuant to this section shall be credited to the appropriate Title II account. CCC shall also consult with USAID's Office of Food For Peace in Washington, DC (USAID/FFP) before it authorizes the settlement, compromise, or termination of a claim. CCC shall also consult with USAID/FFP before it authorizes a CS to compromise a claim pursuant to paragraph (c)(2)(ii)(E) of this section.

\* \* \* \* \*

(i) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for carriage of the commodity donated by CCC: “The provisions of 7 CFR 1405.100 shall be applicable to this contract and are incorporated by reference in their entirety.”

Dated: February 18, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

Dated: January 17, 2003.

**Roger P. Winter,**

*Assistant Administrator, DCHA, Agency for International Development.*

[FR Doc. 03-4574 Filed 2-28-03; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-259-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. For airplanes already subject to the existing AD, this action would require inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, installing protective sleeving over the wire bundles, and installing wire bundle support clamps if necessary. This action also would expand the applicability of the existing AD to include additional airplanes, and require inspecting the sleeving on certain wire bundles, and accomplishing corrective action if necessary, on those airplanes. The actions specified in this proposed AD are intended to detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems.

**DATES:** Comments must be received by April 17, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-259-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcmt@faa.gov](mailto:9-anm-nprmcmt@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2001-NM-259-AD” in the

subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6478; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2001-NM-259-AD.”