

treated with methyl bromide to kill the pine shoot beetle in accordance with 7 CFR 319.40-7(f). In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(2) The regulated articles consist of pine bark and are accompanied by a certificate that specifies both the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The additional declaration section must state, "The pine bark in this shipment has been ground into pieces less than or equal to 1 inch in diameter." In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(3) The regulated articles are shipped from a CFIA-approved facility that processes only regulated articles that originated in areas in Canada or the United States not considered to be infested with pine shoot beetle. The facility must be inspected by the CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures, and the CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the articles, as well as the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(4) The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated in accordance with § 319.40-6. In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, package, or container.

(5) The regulated articles, consisting of logs with bark attached, are consigned to a U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40-8 for specified handling or processing of the regulated articles. The logs must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. facility. The logs must be accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the logs originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. In addition, the name and address (including county and State) of the U.S. facility receiving the logs must be plainly indicated on the regulated articles or, if applicable, on the outer covering or container.

(6) The regulated articles, consisting of pine bark, are shipped from a CFIA-approved facility for use as a fuel at a cogeneration facility in the United States approved by APHIS. The pine bark must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. cogeneration facility. The Canadian facility from which the pine bark is shipped must be inspected by the CFIA at least twice a year to verify that the facility is following handling and processing procedures that adequately safeguard the pine bark for shipment to the U.S. cogeneration facility. CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the pine bark, as well as the name and address of the U.S. cogeneration facility receiving the shipment (including county and State) must be plainly indicated on the outer covering, packaging, or container of the pine bark.

(B) If the regulated articles in paragraphs (i)(2)(iv)(1) through (5) of this section are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0135, and 0579-0257)

#### **Subpart—Gypsy Moth Host Material From Canada**

- 9. Section 319.77-4 is amended as follows:
  - a. In paragraph (a), footnote 1 is revised to read as set forth below.
  - b. In paragraph (b), footnote 2 is revised to read as set forth below.

#### **§ 319.77-4 Conditions for the importation of regulated articles.**

\* \* \* \* \*

<sup>1</sup> Trees and shrubs from Canada may be subject to additional restrictions under "Subpart—Nursery Stock, Plants, Roots, Seeds, and Other Plant Products" (§§ 319.37 through § 319.37-14 of this part) and "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40-1 through 319.40-11 of this part).

\* \* \* \* \*

<sup>2</sup> Logs from Canada are also subject to restrictions under "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40-1 through 319.40-11 of this part).

\* \* \* \* \*

Done in Washington, DC, this 28th day of September 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04-22220 Filed 10-19-04; 8:45 am]  
BILLING CODE 3410-34-P

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 930**

**[Docket No. FV03-930-6 FIR]**

#### **Tart Cherries Grown in the States of Michigan, et al.; Additional Option for Handler Diversion**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim rule that added another method of handler diversion to the regulations under the Federal tart cherry marketing order (order). Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement when volume regulation is in effect by diverting cherries or cherry products rather than placing them in an inventory reserve. Under this additional method, handlers will be allowed to

obtain diversion credit for diverting tart cherries, after processing, that may not be acceptable for the finished products manufactured by the handler. This action was unanimously recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** Effective November 19, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 6C02, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734-5243, or Fax: (301) 734-5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or fax: (202) 720-8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-5698, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." 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 of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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 USDA 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 exempt therefrom. Such 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 in equity to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Handler diversion is authorized under § 930.59 of the tart cherry marketing order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products into authorized outlets. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. The volume regulation provisions of the order provide for a combination of processor owned inventory reserves and grower or handler diversion of excess tart cherries. Reserve cherries may be released for sale into commercial outlets when the free percentage portion of the regulated crop is not expected to fill demand.

Section 930.59(b) of the order provides for the designation of allowable forms of handler diversion. These include: Uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities as provided for in § 930.59(c).

Section 930.159 of the rules and regulations under the order allows handlers to divert cherries by destruction of the cherries at the handler's facility. Currently, at-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. However, experience has shown that this limitation places a burden on handlers regulated under this order.

To remove this burden, the Board unanimously recommended that handlers be allowed to divert and receive diversion credit for tart cherries after processing that may not be acceptable for the finished products they manufacture. With the capability to divert such cherries after processing, but

before the finished product is completed, handlers would have an incentive to remove the lower quality processed cherries from the lot, meet their restricted obligation requirements, and improve the quality of their products. Improvement in the quality of tart cherries and tart cherry products would benefit producers, handlers, and consumers.

This action continues to provide handlers more flexibility in meeting their restricted obligation requirements. The ability to perform at-plant diversion after placing the cherries into the processing line, but before a finished product is completed, will benefit all handlers. This action is expected to especially benefit handlers who only process one product. In many instances, these handlers are small.

This rule continues to allow a handler who processes only five plus one cherries (25 pounds of tart cherries with 5 pounds of sugar added) to fulfill his/her restricted percentage obligation (in a volume regulated year) by diverting at-plant, lower quality wholesome fruit from his/her five plus one processing line. Previously, the diversion took place prior to processing and handlers that processed one product were forced to divert their good quality tart cherries with the lower quality wholesome cherries, or divert cherries by some other approved method. Handlers processing more than one product also are able to take advantage of the additional method of at-plant diversion.

Diversion may also be accomplished by handlers donating cherries to charitable organizations, utilizing cherries in exempt outlets, or redeeming grower diversion certificates obtained from growers who have diverted cherries by non-harvest, and who have been issued diversion certificates by the Board in accordance with rules and regulations governing the issuance of grower diversion certificates (§ 930.158).

The Board reported that during the 2001-2002 crop year, the inventory reserve contained 44.3 percent frozen products, 11.3 percent waterpack, 15.2 percent piefill, 28 percent juice and juice concentrate, and 1.2 percent other products. These percentages show that frozen products, juice and juice concentrate make up most of the reserve quantities.

Pursuant to § 930.159(b), handlers electing to divert cherries or cherry products must first notify the Board and submit a plan for approval. Such notification and plan must include an agreement that diversion will take place under the supervision of the USDA Processed Products Inspection Service or Board employees, and that the costs

of such supervision are to be paid by the handler. USDA inspectors supervise the diversion of cherries or finished products at the current hourly rate under USDA's inspection fee schedule (7 CFR 54.42). Board employees supervise diversion at the same payment rate.

Once diversion is satisfactorily accomplished, handlers receive diversion certificates stating the weight of cherries diverted. Such diversion certificates can be used to satisfy handlers' restricted percentage obligations. Cherries and finished cherry products that have been diverted are not subject to assessments.

### 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 final 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 or regulatory 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 issued 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 tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes 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 \$750,000. A majority of the producers

and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The Board reported that during the 2001–2002 crop year, the inventory reserve contained 44.3 percent frozen products, 11.3 percent waterpack, 15.2 percent piefill, 28 percent juice and juice concentrate, and 1.2 percent other products. These percentages show that frozen products, juice and juice concentrate make up most of the reserve quantities.

The Board unanimously recommended this additional method for diversion credit to allow handlers to divert product after processing that may not be acceptable for the finished products manufactured by the handler. As discussed earlier, this action continues to provide handlers more flexibility in meeting their restricted obligation requirements and is expected to be particularly helpful to handlers who produce only one product. In many instances, the one-product handlers in the tart cherry industry are small.

Handlers that process juice concentrate and other products can more easily meet their restricted obligation requirements by juicing and processing lower quality wholesome product and placing it in the inventory reserve. Handlers that only have the ability to process products requiring higher quality fruit like five plus one cherries have to put this fruit into the inventory reserves, or take advantage of other diversion options available under the order.

To sell more of their higher quality products, some handlers purchase cherries or diversion credit certificates from other handlers to meet their restricted obligation requirements. The added flexibility provided by this action will help all handlers, and is expected to especially benefit the one-product handlers who will be able to sell more of their higher quality cherries in finished product form.

Producers also are expected to benefit from the implementation of this action. Currently, producers can use in-orchard tank diversion, in which cherries harvested into tanks are measured, calculated then diverted in the orchard.

This method of diversion, however, removes both good and lesser quality fruit. Under the Board's recommendation, producers could deliver all of their fruit to handlers and the good quality fruit would be sorted and the poor quality fruit diverted or dumped. Producers would be paid for the good quality fruit. According to the Board, growers are paid on a quality point basis relative to the quality of the fruit delivered. This action would continue to provide producers with more consistent income proportionate to the quality of the fruit delivered to handlers and with discretion to reduce orchard diversion. As such, producers can be more selective in complying with the grower diversion process.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

With regard to alternatives, the Board felt that the recommendation was the only solution to providing handlers additional flexibility in meeting their restricted obligation requirements.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

An interim final rule concerning this action was published in the **Federal Register** on July 9, 2004. Copies of the rule were mailed by the Board's staff to all Board members and tart cherry handlers. In addition, the Office of the Federal Register and USDA made the rule available through the Internet. That rule provided for a 60-day comment period which ended September 7, 2004. No comments were received.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 41383, July 9, 2004) will tend to effectuate the declared policy of the Act.

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

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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

■ Accordingly, the interim final rule amending 7 CFR part 930 which was published at 69 FR 41383 on July 9, 2004, is adopted as a final rule without change.

Dated: October 14, 2004.

**A.J. Yates,**  
Administrator, Agricultural Marketing Service.

[FR Doc. 04-23417 Filed 10-19-04; 8:45 am]

**BILLING CODE 3410-02-P**

#### **NUCLEAR REGULATORY COMMISSION**

#### **10 CFR Part 72**

**RIN 3150-AH50**

#### **List of Approved Fuel Storage Casks: NAC-MPC Revision, Confirmation of Effective Date**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule: Confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 27, 2004, for the direct final rule that was published in the **Federal Register** on August 13, 2004 (69 FR 50053). This direct final rule amended the NRC's regulations to revise the NAC-MPC cask system listing to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1025.

**EFFECTIVE DATE:** The effective date of October 27, 2004, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (<http://ruleforum.llnl.gov>). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On August 13, 2004 (69 FR 50053), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the NAC-MPC cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to CoC No. 1025. This amendment increases vacuum drying time limits, deletes canister removal from concrete cask requirements, revises surface contamination removal time limits, and revises allowable contents fuel assembly limits. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 27, 2004. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 14th day of October, 2004.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**  
Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 04-23426 Filed 10-19-04; 8:45 am]

**BILLING CODE 7590-01-P**

#### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 97**

**[Docket No. 30426; Amdt. No. 3107]**

#### **Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective October 20, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 2004.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*For Purchase—* Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—* Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:**

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service,