

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 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because handlers should be able to take advantage of the relaxed requirements as soon as possible. The shipping season began on July 1, 2001. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 948.387, paragraph (d)(1) is revised, a new paragraph (d)(1)(v) is added, and in paragraph (g) a new sentence is added before the last sentence to read as follows:

§ 948.387 Handling regulation.

* * * * *

(d) * * *

(1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section and the assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) * * *

(v) Experimentation and the manufacture or conversion into specified products.

* * * * *

(g) *Definitions.* * * * The term *manufacture or conversion into specified products* means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the committee, but not including other processing. * * *

* * * * *

Dated: July 27, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–19264 Filed 8–1–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV01–966–1 PR]

Tomatoes Grown in Florida; Changes to the Handling Regulation for Producer Field-Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the requirements currently prescribed for producer field-packed tomatoes under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This rule would remove the net weight and weight labeling exemptions for producer field-packed tomatoes. Producer field-packed tomatoes compete directly with packinghouse tomatoes that must meet the net weight requirement. This change would require all tomatoes, regardless of where they are packed, to meet the same net weight requirements so that these requirements are the same for producer field-packed tomatoes and packinghouse tomatoes.

DATES: Comments must be received by August 22, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, 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: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, 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) 720–8938.

Small businesses may request information on complying 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) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the “order.” The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 the date of the entry of the ruling.

This proposal invites comments on removing the net weight exemption currently prescribed for producer field-packed tomatoes under the Florida tomato marketing order. The Committee recommended this change at its meeting on February 27, 2001, with a vote of eight in favor and two opposed.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of 2 $\frac{1}{32}$ inches in diameter. Current pack and container requirements outline the types of information that need to appear on a container, weight restrictions, and where the containers must be packed.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. It includes authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order.

Section 966.323 specifies the handling regulations issued under the order. Section 966.323(a)(3)(i) requires that certain types of tomatoes packed by registered handlers be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight of a container's contents cannot be less than the designated net weight or exceed the designated net weight by more than two pounds. Section 966.323(a)(3)(ii) requires that certain types of tomatoes be packed by registered handlers in containers that are marked with the designated net weight and with the name and address of the registered handler, and that such containers must be packed at the registered handler's facilities.

Section 966.323(d)(1) currently exempts producer field-packed tomatoes from the container net weight requirements and the requirement that each container or lid be marked to indicate the designated net weight. It also exempts producer field-packed tomatoes from the requirement that all containers must be packed at a registered handler's facilities. However, field-packed tomatoes still must meet the other requirements of the marketing order, including established grade, size, container, pack, and inspection requirements.

This rule would remove the net weight and weight labeling exemptions for producer field-packed tomatoes. This change would require all tomatoes,

unless specifically granted an exemption, to meet the same net weight requirements regardless of where they are packed.

Producer field-packed tomatoes are tomatoes which at the time of inspection are No. 3 color or higher (according to color classification requirements in the U.S. tomato standards), that are picked and place packed in new containers in the field by a producer as defined in § 966.150 of the rules and regulations. The tomatoes are then transported to a registered handler's facilities for final preparation for market and for inspection.

Producer field-packed tomatoes are picked by hand and place packed in containers in layers. When place packing a container of tomatoes, the fill is determined by the size of the tomato, dimensions of the container, and the way the tomatoes are positioned in the box. Each layer is tightly packed by rotating the tomatoes and by the size selection of the tomatoes. Each 25-pound container usually has three to four layers of tomatoes.

Most tomatoes from Florida are packed and shipped at the mature green stage. Shipments of mature green tomatoes represented approximately 83.7 percent of total fresh shipments during the 1999–2000 season. Tomatoes are picked and packed at the mature green stage to facilitate handling. The vast majority of mature green tomatoes are packed using a mechanized process. The tomatoes are brought to the packinghouse where they are run across sizing equipment, and then are packed in volume fill containers by size and weight. At the mature green stage, the tomatoes are firm and are able to withstand the packing process. This is an efficient process that facilitates packing in volume.

However, when packing a producer field-packed tomato that is more ripe and mature, the process used to pack mature greens is not as effective. This is because as the tomato begins to ripen it begins to soften. Tomatoes of No. 3 color and above cannot tolerate the rigors of the mechanized handling process. This packing process bruises and damages more mature tomatoes, increasing the volume of culls and tomatoes that fail inspection.

When the net weight exemption for producer field-packed tomatoes was established October 10, 1998 (63 FR 54556), the Committee thought that meeting the net weight requirement would be difficult without the precision of the mechanical process available at the packinghouse. Therefore, the Committee recommended establishing the net weight exemption to facilitate

the packing of field-packed tomatoes. However, after several years of experience, those packing producer field-packed tomatoes have enhanced their skill for packing tomatoes in the field. Many now pack to meet the net weight requirement even though the exemption is available.

Field-packed tomatoes are sized as either 5X6 or 6X6 and larger with no upper limit on either size. This differs from the size requirements for tomatoes packed at a packinghouse. Packinghouse tomatoes must meet a minimum and a maximum size requirement on tomatoes designated as 6X6. Because there is no upper limit on the either 5X6 or 6X6 sized field-packed tomatoes, handlers have more flexibility to add and remove tomatoes of different sizes in order to meet a specified weight requirement without compromising their ability to meet the size requirement. Handlers can replace larger tomatoes with smaller ones and vice versa in order to adjust box weight to meet the net weight requirements. In its discussion, the Committee stated that most handlers of producer field-packed tomatoes are voluntarily meeting the 25-pound net weight requirements.

It also found that some handlers have started using the net weight exemption as a marketing tool. The Committee stated that producer field-packed tomatoes packed in containers designed to hold a 25-pound designated net weight were being presented for sale with weights of 28 to 32 pounds. The net weight requirement only allows packinghouses to put between 25 and 27 pounds of tomatoes to a box. Some handlers of producer field-packed tomatoes are adding additional tomatoes to the containers to create a marketing advantage over those handlers required to meet the net weight requirements. Buyers prefer the additional weight in containers of field-packed tomatoes to packinghouse tomatoes because they are getting more tomatoes for their money.

In its discussions, Committee members stated that over packing containers is a poor marketing practice. Selling a container of tomatoes that weighs more than 25 pounds at the price for a 25-pound container has a price depressing effect on the market, and reduces returns to growers. It was also noted that the marketing order was put in place to create an orderly market for all tomatoes grown in Florida because the market at that time was in such disarray. The net weight was established to provide an industry standard and give buyers and sellers a uniform point of comparison. With the volume of producer field-packed tomatoes increasing, several Committee

members stated that continuing with the net weight exemption for field-packed tomatoes was taking a step backwards in terms of orderly marketing.

In addition, there was also concern regarding the possibility that damaged tomatoes could reach the market. Committee members stated that when a 25-pound box of tomatoes is filled to exceed a 27-pound net weight, there is an increased chance that tomatoes will be crushed when placing the lid on the container. Overfilling could also result in fruit being damaged during shipment.

The market for red, vine-ripe tomatoes has grown over the past few years. The Committee now estimates that between five and fifteen percent of the total daily fresh tomato shipments from Florida are producer field-packed tomatoes. This is a one to two percent increase from last season. Retailers consider the fast growing market for red, vine-ripe tomatoes to be the way of the future and the Committee estimates that the volume of producer field-packed tomatoes will continue to grow in order to supply this market. Therefore, the Committee wants to continue to develop this market by providing a uniform, quality product.

Therefore, this rule would remove the exemption from the net weight requirement for producer field-packed tomatoes, and would require producer field-packed tomatoes to meet the same net weight and weight labeling requirements as those packed in a packinghouse.

The two Committee members who opposed the recommendation agreed that a problem exists with the net weight exemption for producer field-packed tomatoes. However, they were not sure that the action recommended was the best solution to the problem and wanted more time to consider the issue. Therefore, they voted against the proposal.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of pack and container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulation as a result of this action.

This change would not affect the exemption for single layer and two-layer place packed tomatoes. They would continue to be exempt from the net weight requirements under the order.

Therefore, producer field-packed tomatoes place packed in single or two layer packs would continue to be exempt from the net weight requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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 82 handlers of Florida tomatoes who are subject to regulation under the marketing order and approximately 100 tomato producers in the regulated area. Small agricultural service firms are 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.

Based on the industry and Committee data, the average annual price for fresh Florida tomatoes during the 1999–2000 season was \$6.89 per 25-pound carton or equivalent, and total fresh shipments for the 1999–2000 season were 58,006,721 25-pound equivalent cartons of tomatoes. Based on this information, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes may also be classified as small entities.

This proposal would revise the handling requirements currently prescribed for producer field-packed tomatoes under § 966.323 of the order. Currently, producer field-packed tomatoes are exempt from the net weight requirements under the order. The net weight requirement only allows packinghouses to put between 25 and 27 pounds of tomatoes into a box designed to hold 25 pounds. Some handlers of producer field-packed tomatoes are adding additional tomatoes to their containers to the detriment of handlers required to meet the net weight requirements. This rule would remove the exemption from the net weight requirement for producer field-packed tomatoes and require all tomatoes, regardless of where they are packed, to

meet the same net weight requirements. Authority for this action is provided in § 966.52 of the order.

There could be some additional costs associated with this rule. Removing the net weight exemption would require those packing producer field-packed tomatoes to take the steps necessary to ensure that the tomatoes meet the net weight requirement. This could result in additional costs from the purchase of equipment to weigh the boxes and additional labor needed. However, many of those packing producer field-packed tomatoes have already incurred these costs and are meeting the net weight requirements voluntarily.

Currently, boxes containing between 28 and 32 pounds of field-packed tomatoes may be sold for the same price as a box containing 25 to 27 pounds of tomatoes. This reduces total pack out, depresses price, and reduces returns to the grower. In addition, these tomatoes are being sold into what retailers consider to be the fastest growing segment of the tomato market. Over packing boxes increases the probability that some tomatoes will be damaged. Shipping damaged tomatoes could have a negative impact on the market and the ability of Florida tomato handlers in meeting that market's needs. This rule would help counter that possibility.

This rule was recommended to benefit the Florida tomato industry. The costs or benefits of this rule would not be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this change, including making no change to the regulation. However, Committee members agreed that action needed to be taken, so this alternative was rejected. Another alternative considered was to change the size of the box for field-packed tomatoes. Some members of the Committee stated that this would not solve the problem, only add another box size, noting that handlers are already selling a 25-pound container of producer field-packed tomatoes that weighs more than 25 pounds. Changing only the size of the container would not prevent handlers from continuing to overfill the cartons. Therefore, this alternative was also rejected.

This proposed rule would remove the exemption from the net weight requirement for producer field-packed tomatoes under the Florida tomato marketing order.

This action would not impose any additional reporting or recordkeeping requirements on either small or large tomato 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 proposed rule.

Further, the Committee's meeting was widely publicized throughout the tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 27, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. 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.

This rule invites comments on a change to the handling requirements currently prescribed under the Florida tomato marketing order. A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because any changes resulting from this proposed rule should be effective by the start of the 2001/2002 season, which begins October 10, 2001. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the last sentence of paragraph (d)(1) to read as follows:

§ 966.323 Handling regulation.

(d) *Exemption.* (1) * * * Producer field-packed tomatoes must meet all of the requirements of this section except for the requirement that all containers

must be packed at registered handler facilities as specified in paragraph (a)(3)(ii) of this section, and the requirement that such tomatoes designated as size 6 x 6 must meet the maximum diameter requirement specified in paragraph (a)(2)(i) of this section: *Provided*, That 6 x 6 and larger is used to indicate the listed size designation on containers.

* * * * *

Dated: July 27, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–19266 Filed 8–1–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation

Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes. That action would have required repetitive inspections of the side load underwing fitting bushings for broken sealant or bushing migration, and corrective action, if necessary. That action also would have provided for optional terminating action in lieu of repetitive inspections. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data and has issued alternative rulemaking action. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: John D. Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on November 24,

1999 (64 FR 66119). The proposed rule would have required repetitive inspections of the side load underwing fitting bushings for broken sealant or bushing migration, and corrective action, if necessary. The proposed rule also would have provided for optional terminating action in lieu of repetitive inspections. The proposed rule was prompted by reports of migrated bushings and corrosion on the side load fittings. The proposed actions were intended to prevent corrosion in the side load underwing fitting, which could result in cracking and consequent reduced structural integrity of the wing strut.

Actions Since Issuance of the NPRM

Since the issuance of that NPRM on November 18, 1999, the FAA has issued alternative rulemaking action, which, in addition to comments we have received in response to the NPRM, has caused us to reconsider our previous position on this rulemaking action.

We have considered the comments and recommendations we received. Although one commenter supports the NPRM as proposed, eight other commenters object to it for various reasons. Some of those reasons follow:

- Bushing migration does not present an immediate safety concern, and no significant corrosion has been found in the side load underwing fitting. For these reasons, the commenters believe that the inspections specified in the NPRM are unnecessary.

- The cost estimates in the NPRM are too low because of the extensive work required, special tooling, and the resultant impact on scheduled service. Operators recommend increasing the cost estimates to include additional costs for labor, access and closeup, and special tooling and equipment.

- The compliance times for the inspections, as specified in the NPRM, would put affected airplanes out of service for an extended period. One commenter states that the manufacturer would not be able to provide an adequate number of kits within the specified compliance time. Operators recommend that the compliance times coincide with other existing maintenance programs such as the Strut Improvement Program (SIP) and the Corrosion Prevention and Control Program (CPCP).

- Removing and reinstalling the wing struts is not a routine task performed at regular maintenance intervals. In addition, the frequency of strut removal specified in the NPRM would severely impact airline schedules. The manufacturer recommends removing the strut only during a CPCP inspection,