

cherries for exempt uses such as exports. This will provide the industry with flexibility to meet market needs in domestic and export outlets from year to year which is in the interest of growers and handlers, whether small or large. Market development and expansion is important to the long-term strength of the industry.

One alternative to this action would be to continue the status quo. However, this would not be favorable to cherry growers and handlers and could delay the long-term development of export markets.

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.

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.

The Board's telephone 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 were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 3, 2001 (66 FR 229). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, this rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 5, 2001. No comments were received.

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.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that the word "normal" in § 930.54(a) no longer tends to effectuate the declared policy of the Act and should be indefinitely suspended. Accordingly, this action finalizes the interim final rule, without change, as published in the **Federal Register** 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 66 FR 229 on January 3, 2001, is adopted as a final rule without change.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-10661 Filed 4-27-01; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01-930-1 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0017 to \$0.0012 per pound. It also decreased the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00085 to \$0.0006 per pound. Both

assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000-2001 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates continue to remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734-5243, Fax: (301) 734-5275; 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) 720-5698.

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, 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 Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such

assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or terminated. 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. 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 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 rule continues the interim final rule which decreased the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0017 to \$0.0012 per pound of cherries. The assessment rate decrease for cherries utilized for juice, juice concentrate, or puree from \$0.00085 to \$0.0006 per pound also is continued.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the

Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended, and the Department approved, 2000–2001 expenditures of \$455,000 and assessment rate decreases from \$0.00225 to \$0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and from \$0.001125 to \$0.00085 per pound for cherries utilized for juice, juice concentrate, or puree.

The Board met again on September 8, 2000, and unanimously recommended a further decrease in the assessment rates to \$0.0012 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and to \$0.0006 per pound for cherries utilized for juice, juice concentrate, or puree. Further decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons and again this season. In addition, the Board wants to further reduce handler costs while maintaining a monetary reserve which is adequate to cover approximately six months' operational expenses (based on an annual operating budget of approximately \$455,000). Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented less than 14 percent of the total processed crop, and about 10 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$318,000 (265 million pounds $\times$ \$0.0012 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$9,000 (15 million pounds $\times$ \$0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at \$327,000. This amount plus funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately \$374,000) will be kept within the approximately six months' operating expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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) allows 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 opts for such certification, but rather performs 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 the 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 order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$5,000,000, and small agricultural producers are those whose annual receipts are less than \$500,000. The majority of tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended, and the Department approved, 2000–2001 expenditures of \$455,000 and assessment rate decreases from \$0.00225 to \$0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate or puree and from \$0.001125 to \$0.0085 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule continues the interim final rule which further decreased the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0017 to \$0.0012 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00125 to \$0.0006 per pound. The Board unanimously recommended 2000–2001 expenditures of \$455,000 and the further reduced assessment rates. The

quantity of assessable tart cherries expected to be produced during the 2000–2001 crop year is estimated at 280 million pounds. Assessment income, based on this crop, along with interest income and reserves should be adequate to cover budgeted expenses.

The Executive Committee of the Board, after discussing the budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have an operating reserve of approximately one year's operating expenses.

However, after considerable discussion, the Board concluded it should further reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Also, the cherry industry has experienced record large crops for the past two seasons, and again this season. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to further decrease the assessment rates. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$318,000 (265 million pounds $\times$ \$0.0012 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be \$9,000 (15 million pounds $\times$ \$0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at \$327,000. This amount plus funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately \$374,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

This action continues the interim final rule which decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to

producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2000, 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.

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.

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

An interim final rule concerning this action was published in the **Federal Register** on January 3, 2001 (66 FR 232). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, this rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 5, 2001. No comments were received.

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.

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** 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 66 FR 232 on January 3, 2001, is adopted as a final rule without change.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-10663 Filed 4-27-01; 8:45 am]

BILLING CODE 3410-02-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-45-AD; Amendment 39-12209; AD 2001-09-04]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-300 Series Airplanes Equipped with Motive Flow Check Valves Having Part Number 106-0007-01

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dornier Model 328-300 series airplanes. This action requires repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves, if leaks are detected. This action is necessary to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources. This action is intended to address the identified unsafe condition.

DATES: Effective May 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 2001.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-

45-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. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-45-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 this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328-300 series airplanes. The LBA advises that three incidents have been reported of cracks on the motive flow check valves, which have resulted in leakage of fuel. The cause of the cracking is not yet known. This condition, if not corrected, could result in fuel vapors coming into contact with fuel ignition sources.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB 328J-28-007, dated September 20, 2000, which describes procedures for an initial general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube for signs of fuel droplets or fuel staining. The alert service bulletin also describes procedures for repetitive general visual inspections around the motive flow check valve for fuel leaks, and replacement of the valves with new valves, if leaks are detected. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2001-058, dated March 8, 2001, in order to assure the

continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that