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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV99-923-1 IFR]

Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the pack requirements currently prescribed under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule establishes two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The two additional row count/row size designations are 8 row ($8\frac{3}{4}$ / $6\frac{1}{4}$ inches in diameter) and 8½ row ($7\frac{9}{16}$ / $6\frac{1}{4}$ inches in diameter). This change will allow the Washington cherry industry to further differentiate cherries by row count/row size. The change is intended to provide handlers more marketing flexibility, clarify the choices available to buyers, and improve returns to producers.

DATES: Effective June 25, 1999; comments received by August 23, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or

E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; 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. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Marketing Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, 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. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the pack requirements currently prescribed under the Washington cherry marketing order. This rule establishes two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety or varieties of cherries grown in any district or districts of the production area during any period or periods. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under § 923.52.

Minimum grade, size, quality, maturity, container, and pack requirements for cherries regulated under the order are specified in § 923.322. Paragraph (e) of that section provides that when containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of the table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of

undersize of the entire lot shall be within the tolerance specified.

TABLE

| Column 1, row count/row size | Column 2 diameter (inches) |
|------------------------------|----------------------------------|
| 9 | 75/64 |
| 9 1/2 | 71/64 |
| 10 | 67/64 |
| 10 1/2 | 64/64 |
| 11 | 61/64 |
| 11 1/2 | 57/64 |
| 12 | 54/64 |

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington cherries which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements currently prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation. The additional row count/row size designations recommended are 8 row (84/64 inches in diameter) and 8 1/2 row (79/64 inches in diameter). The Committee requested that this rule be effective as soon as possible as shipments of the 1999 Washington cherry crop may begin as early as mid-June.

When the current row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8 1/2 row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data during peak shipment periods shows an increase of \$2 per container for each row count/row size designation increase. Therefore, it is

anticipated that 8 row and 8 1/2 row cherries will receive an additional \$2 and \$4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries produced and shipped is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size now designated is 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row are not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

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 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 70 handlers of Washington cherries who are subject to regulation under the marketing order and approximately 1,100 cherry producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) 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.

Currently, about 93 percent of the Washington cherry handlers ship under \$5,000,000 worth of cherries and 7 percent ship over \$5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington cherry producers, the average annual grower revenue is approximately \$100,000. In view of the foregoing, it can be concluded that the majority of handlers

and producers of Washington cherries may be classified as small entities.

This rule changes the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements currently prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The additional row count/row size designations recommended are 8 row (84/64 inches in diameter) and 8 1/2 row (79/64 inches in diameter).

When the current row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8 1/2 row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size cherries will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger-sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data for peak shipment periods shows an increase of \$2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8 1/2 row cherries will receive an additional \$2 and \$4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size now designated is 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row are not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will allow handlers to market larger cherries in containers designated with the larger row counts/row sizes. Accurate

identification of the sizes packed in the containers is expected to benefit buyers. Further, this rule will allow handlers greater flexibility in marketing the Washington cherry crop.

The Committee did not discuss any alternatives to this rule, except not to allow the larger row count/row size designations for larger cherries. This was not acceptable because producers and handlers would not be able to reap the benefits expected from further differentiation of the larger sizes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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 sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 15 members, of which 5 are handlers and 10 are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the pack requirements currently prescribed under the Washington cherry marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule changes the pack requirements for Washington cherries which should be in effect as soon as possible as 1999–2000 season shipments

of Washington cherries are expected to begin shortly, and this action should apply to as much of the season's shipments as possible; (2) this rule was unanimously recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) Washington cherry handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR Part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 923.322 is amended by revising paragraph (e) to read as follows:

§ 923.322 Washington Cherry Regulation 22.

* * * * *

(e) *Pack.* (1) When containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

TABLE

| Column 1, row count/row size | Column 2 diameter (inches) |
|------------------------------|--------------------------------|
| 8 | 8 ⁴ / ₆₄ |
| 8½ | 7 ⁹ / ₆₄ |
| 9 | 7 ⁵ / ₆₄ |
| 9½ | 7 ¹ / ₆₄ |
| 10 | 6 ⁷ / ₆₄ |
| 10½ | 6 ⁴ / ₆₄ |
| 11 | 6 ¹ / ₆₄ |
| 11½ | 5 ⁷ / ₆₄ |
| 12 | 5 ⁴ / ₆₄ |

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Dated: June 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–16055 Filed 6–23–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–26–AD; Amendment 39–11205; AD 99–11–04]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–11–04 which was sent previously to all known U.S. owners and operators of Sikorsky Aircraft Model S–76A helicopters by individual letters. This AD requires, before further flight, either revising the flight manual to show reduced single-engine rotorcraft performance or determining if an AC generator interlock system is installed. If an interlock system is installed, the flight manual revision is not required. This amendment is prompted by the discovery that Sikorsky Aircraft Model S–76A helicopters with Turbomeca Arriel 1S1 engines may fail to achieve the specified single-engine rotorcraft performance if an AC generator interlock system is not installed. The actions specified by this AD are intended to prevent the inability of the rotorcraft to achieve certain published one-engine-inoperative performance.

DATES: Effective July 9, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–11–04, issued on May 13, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Mann, Aerospace Engineer,