

effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

The Committee anticipates that this rule will not negatively impact small businesses. This rule suspends minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule allows handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season was estimated at \$600,000. The 1998–99 marketing season was the most recent year for mandatory inspection. This is approximately \$20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The suspension of the assessment collection requirements for the 2000–2001 and future seasons also will result in some cost savings. Assessment collections during the 1999–2000 season totaled \$25,500. Absent the suspension of § 947.247, assessments collected during the 2000–2001 season would have been about \$26,000, according to Committee estimates.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of all of the reporting requirements is expected to reduce the reporting burden on small or large Oregon-California potato handlers by almost 300 hours, and should further reduce industry expenses. 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 Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 31,

2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on July 10, 2000. Copies of this rule were mailed by the Committee's staff to all Committee members. In addition, the 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 September 8, 2000. 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 Committee's recommendation, and other information, it is found that the regulations suspended by this action no longer tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 65 FR 42275 on July 10, 2000, is adopted as a final rule with the following change:

#### **PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY**

1. The authority citation for 7 CFR Part 947 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§§ 947.120, 947.123, 947.130, 947.132, 947.133, 947.134, 947.141, 947.247, 947.340 [Suspended]**

2. In Part 947, §§ 947.120, 947.123, 947.130, 947.132, 947.133, 947.134, 947.141, 947.247, and 947.340 are suspended in their entirety effective July 1, 2000.

Dated: October 31, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–28334 Filed 11–3–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV00–966–1 IFR]

#### **Tomatoes Grown in Florida; Change in Size Designation**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the maximum diameter of the 6x6 numeric size designation currently prescribed 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). The maximum diameter will be increased by  $\frac{2}{32}$  of an inch, from  $2\frac{27}{32}$  inches to  $2\frac{29}{32}$  inches. This change will allow handlers to pack slightly larger tomatoes in a 6x6 container, and provide them with greater flexibility when packing tomatoes. The increased flexibility is expected to increase the number and availability of containers of 6x6 tomatoes, which are often in short supply.

**DATES:** Effective November 8, 2000; comments received by January 5, 2001 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, Marketing Order Administration Branch, 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](mailto: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) 720–5698.

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) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties 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 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.

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  $2\frac{3}{32}$  inches in diameter. Current pack and container

requirements outline the types of information that need to appear on a container, weight restrictions, and other requirements containers must meet.

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

Section 966.323 of the order's rules and regulations specifies the handling regulations for Florida tomatoes. Section 966.323(a)(2)(i) currently specifies that all tomatoes packed by a registered handler must meet a minimum size requirement of  $2\frac{9}{32}$  inches in diameter. That section also requires that all such tomatoes must be sized with proper equipment in one of three numeric size designations with specified ranges of diameter. Tomatoes designated as "6x7" must be a minimum of  $2\frac{9}{32}$  inches in diameter and a maximum of  $2\frac{19}{32}$  inches. These are the smallest tomatoes marketed. Tomatoes, other than producer field-packed tomatoes, designated as "6x6" must be a minimum of  $2\frac{17}{32}$  inches in diameter and a maximum of  $2\frac{27}{32}$  inches in diameter. Tomatoes designated as "5x6" must be a minimum of  $2\frac{25}{32}$  inches in diameter with no maximum size requirement. These are the largest size marketed. To allow for variation incident to proper sizing, not more than a total of 10 percent, by count, of the tomatoes in the lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

This rule increases the maximum diameter currently prescribed for size 6x6 tomatoes by  $\frac{2}{32}$  of an inch, from  $2\frac{27}{32}$  inches to  $2\frac{29}{32}$  inches. This change will allow handlers the option of packing slightly larger tomatoes in a 6x6 container. This increased flexibility in packing tomatoes is expected to allow handlers to pack some of the smaller 5x6 tomatoes into 6x6 containers. This is expected to increase the number and availability of containers of 6x6 tomatoes, which are often in short supply, and improve the uniformity of the 5x6-sized tomatoes. The Committee unanimously recommended this change at a meeting held on September 8, 2000.

Based on an analysis of markets and demands of buyers, the Committee believes that this increase in the maximum diameter for size 6x6 tomatoes will improve the marketing of Florida tomatoes, provide handlers with additional flexibility in packing tomatoes, and help improve grower returns. Recent industry trends have been toward shipping larger tomatoes.

In response to a strong consumer demand, new commercial tomato varieties have been planted to produce bigger tomatoes and have resulted in more large sized tomatoes being shipped. Because of this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields. Increasing the 6x6 maximum diameter will provide handlers the option of shifting the smallest sized tomatoes in a 5x6 pack to a 6x6 pack. By making this shift, handlers will be able to increase the average size in both the 6x6 and the 5x6 pack.

The  $\frac{2}{32}$  inch increase in the maximum diameter of the 6x6-size designation results in a  $\frac{4}{32}$  overlap in the maximum diameter of the 6x6 and the minimum size for the 5x6. Tomatoes at the bottom of the 5x6 size can either be packed as 5x6 tomatoes or as 6x6 tomatoes. According to the Committee, this will provide for greater distribution of tomato shipments throughout the two size designations, enabling handlers to make better decisions on which size of tomatoes to pack. Such packing decisions could depend on specific buyer or market demands, on general crop size, or on prices.

Shifting the smallest sizes from the 5x6 pack to the 6x6 pack would increase the average size in both the 6x6 and the 5x6 packs. It would move larger tomatoes into the 6x6 pack while providing space for additional larger tomatoes in the 5x6 pack. This would lower the count of tomatoes for each pack as well. In its discussions, the Committee recognized that buyers prefer larger tomatoes and a lower count per box. With buyer preferences trending toward larger sized tomatoes, the Committee believes that having this option could help grower returns.

This change also makes more tomatoes available to fill the 6x6 pack. In past years, there have been shortages of this pack due to tomato size. Committee members stated that during the past season there were periods when the tomatoes were sizing so well they were having trouble packing many 6x6 packs. The Committee recognized that there is a strong demand for the 6x6 pack and that it brings a favorable price, occasionally equal to or above the price for a 5x6 pack. Therefore, the Committee believes that it is important to continue to supply this market. With the option of shifting slightly larger tomatoes into the 6x6 pack, handlers will have more flexibility to move tomatoes to meet market demand. This will be particularly beneficial when the majority of tomatoes are sizing well.

In addition, the Committee also believes that raising the maximum diameter for the 6x6 pack could improve the uniformity of tomato in the 5x6 pack. While increasing the maximum diameter of the 6x6 pack does increase the size range, the increase is only by  $\frac{2}{32}$  of an inch. Further, shifting the smaller sizes from a 5x6 pack to the 6x6 pack could improve the uniformity of the 5x6 pack, which is expected to be viewed as a benefit to buyers.

Because there is no upper limit on size for a 5x6 pack, there can be a considerable variation in size. With newer tomato varieties producing larger fruit, the size variance in containers of 5x6 tomatoes has grown. This size variation is particularly evident with the smaller sizes in the pack. By having the opportunity to shift the smaller sizes to the 6x6 pack, handlers will be able to improve the uniformity of their 5x6 packs. This is particularly important because the 5x6 pack usually commands the best price in the market, faces the most competition, and is the most popular size.

During the 1999–2000 season, approximately 58 percent of the Florida tomatoes sold were 5x6 packs, and about 28 percent were sold as 6x6's. Increasing the maximum diameter size of the 6x6 by  $\frac{2}{32}$  inch will give handlers the flexibility to reduce the number of smaller sized tomatoes packed in the 5x6-size designation.

A study conducted by Dr. John J. VanSickle at the University of Florida indicates that increasing the maximum diameter could result in an increase in the prices received for Florida tomatoes. The study indicates that if 1 percent of the smallest 5x6 size tomatoes are shifted into the smaller size categories, then prices for 5x6 size tomatoes could increase by .25 percent. With regard to 6x6 size tomatoes, the study indicates that the prices could increase by .15 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations, which is a response to consumer demand for a more consistent pack and slightly larger tomatoes.

Committee members do not believe that this change will create any confusion on the part of buyers. Rather, they stated that this change will allow handlers more opportunity to address the demands of their buyers.

Consumers and buyers are demanding a slightly larger tomato. Smaller tomatoes with a less uniform pack have poor consumer acceptance, especially in chain stores. This change provides handlers with some flexibility to adjust the size composition and uniformity of

their packs to address the needs of their customers.

This change does not affect the current exemption provided to producer field packed tomatoes as long as the containers are designated as 6x6 and larger. Specifically, field packed tomatoes designated as size 6x6 and larger are not subject to the maximum diameter specified in the order's rules and regulations for 6x6 sized tomatoes (65 FR 8247, February 18, 2000).

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 container requirements on imports, when such requirements are in effect under a domestic marketing order. Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size designations may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Therefore, no change is necessary in the tomato import regulation as a result of this action.

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 Florida tomatoes who are subject to regulation under the marketing order and approximately 130 tomato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

Committee data indicates that approximately 20 percent of the Florida tomato handlers handle 80 percent of the total volume. 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 rule increases the maximum diameter requirement for size 6x6 tomatoes currently prescribed in the order's handling regulations. It increases the maximum diameter for size 6x6 tomatoes by  $\frac{2}{32}$  of an inch, from  $2\frac{27}{32}$  inches to  $2\frac{29}{32}$  inches, and will allow handlers the option of packing slightly larger tomatoes in a 6x6 container. With this increased flexibility, handlers will be able to better meet consumer demand for larger tomatoes, while providing greater returns to growers. The Committee unanimously recommended this change. Authority for this action is provided in § 966.52.

If the handlers take advantage of the increased packing flexibility, they would incur direct costs associated with the purchase of new sizing belts. Sizing belts convey and size fruit during the packing process. Depending on the amount of use, sizing belts can last a season or may need to be replaced two to three times a season. Estimated prices associated with these purchases could range from \$450.00 for a small handler to \$19,000 for very large handlers. While there are short-term costs associated with the new maximum diameter of the 6x6 sizing designation, the benefits are expected to outweigh the costs. Moreover, changing sizing belts is a routine action since they have to be regularly replaced depending on use. These costs are expected to be minimal relative to the benefits expected, and in relation to normal operating costs and procedures.

A study conducted by Dr. John J. VanSickle at the University of Florida estimates that a shift of 1 percent of 5x6 tomatoes into the smaller size categories would increase the prices for 5x6-size tomatoes by .25 percent. For 6x6's, the price could increase by .15 percent. The increase in price would occur in response to consumer demand for packs with slightly larger tomatoes.

This change is designed to provide handlers with more flexibility as to how sizes are packed. Because of this, handlers can choose to continue to pack as they have without making any adjustments due to this rule change. Purchasing new equipment is not necessary to remain in compliance with

order provisions. Therefore, this rule places the decision with the individual handler as to whether the costs are outweighed by the benefits.

Individual seasons and different periods during the same season can present a fair amount of variability in production and size. This change provides handlers with some additional flexibility when packing for size to allow handlers to make some adjustments in order to maximize returns and to service customer demand. This rule will provide the opportunity for handlers to make adjustments based on market conditions. This should have a positive effect on returns.

The Committee recommended these changes to improve the marketing of Florida tomatoes. The opportunities and benefits of this rule are expected to be equally available to all tomato handlers and growers regardless of their size of operation. This action will have a beneficial impact on producers and handlers since it will allow tomato handlers more flexibility in making tomatoes available to meet consumer needs consistent with crop and market conditions.

The Committee discussed alternatives to this recommendation, including leaving the regulations as currently issued. All Committee members agreed that this change would be helpful in improving pack appearance and in providing handlers some additional flexibility. Therefore, the Committee voted to make this change rather than leave the size designation for 6×6 unchanged.

This rule will 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 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. Like all Committee meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee.

The Committee's Marketing Subcommittee met on August 21, 2000, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. 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 size requirements currently prescribed under the Florida tomato marketing order. Any comments received will be considered prior to finalization of this rule.

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.

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) The regulatory period for the 2000–2001 shipping season began October 10 and the changes should be in place as close to the beginning of the season as possible; (2) Florida tomato handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and interested parties had an opportunity to provide input; (3) the packing flexibility afforded handlers can be utilized as they see fit, they will not need additional time to comply with the regulation; 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 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is 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.

### § 966.323 [Amended]

2. In § 966.323, the table to paragraph (a)(2)(i) is amended by removing “2<sup>27/32</sup>” and adding “2<sup>29/32</sup>” in its place.

Dated: October 31, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–28332 Filed 11–3–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000–NM–130–AD; Amendment 39–11954; AD 2000–22–08]

**RIN 2120–AA64**

### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires inspections of certain components, and corrective action, if necessary. The actions specified by this AD are intended to prevent deterioration and deformation of the mass-balance weights of the aileron, which could affect the surface balance of the aileron and result in loss of aileron control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective December 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,