

relatively easy to produce lightly-colored sweet cherries with a pink to reddish surface blush, since the added color is related to the amount of direct sunlight available to the fruit. Pruning and other common cultural practices can greatly affect the amount of blush on the cherries. Finally, since this change is only required should a handler choose to pack and mark lightly-colored cherries to the "premium" standard, any additional costs can be eliminated by the handler.

The Committee discussed alternatives to the recommended action. The most significant alternative would have been a recommendation that mandated a minimum percentage of reddish color on lightly colored sweet cherries, as well as a mandatory increase in the minimum size (currently 11-row size or 61/64 minimum diameter). There were other various options briefly discussed under this alternative related to sizing and the actual degree of blush. Comments from many of those attending the May 14th meeting indicated that a mandatory change in size and pack requirements would not be well received by the industry at this time, and that the less restrictive recommendation subsequently made should adequately solve the current marketing problem.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large sweet 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, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in the deliberations. Like all Committee meetings, the May 14, 2009, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received will be considered before a final determination is made on this matter.

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 proposed to be 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.

§ 923.322 [Amended]

2. In § 923.322, redesignate paragraph (e) as paragraph (d), add a new paragraph (e), and revise the introductory sentence of paragraph (g) to read as follows:

§ 923.322 Washington cherry handling regulation.

* * * * *

(e) *Light sweet cherries marked as premium.* No handler shall handle, except as otherwise provided in this section, any package or container of Rainier cherries or other varieties of lightly colored sweet cherries marked as *premium* except in accordance with the following:

(1) *Quality.* 90 percent, by count, of such cherries in any lot must exhibit a pink-to-red surface blush and, for any given sample, not more than 20 percent of the cherries shall be absent a pink-to-red surface blush.

(2) *Pack.* At least 90 percent, by count, of the cherries in any lot shall measure not less than 64/64-inch (10½-row) in diameter and not more than 5 percent, by count, may be less than 61/64-inch (11-row) in diameter.

* * * * *

(g) *Exceptions.* Any individual shipment of cherries which meets each of the following requirements may be

handled without regard to the provisions of paragraphs (a), (b), (c), (d), and (e) of this section, and of §§ 923.41 and 923.55.

* * * * *

Dated: February 25, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM-73-14; NRC-2009-0493]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted by the Nuclear Energy Institute (NEI) (the petitioner). The petitioner requested that the NRC amend the compliance date for specific requirements in the NRC's regulations. The NRC decided to deny PRM-73-14 for the reasons stated in this document.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Federal Rulemaking Web site: Supporting materials related to this petition for rulemaking can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2009-0493. Address questions about NRC dockets to Carol

Gallagher 301-492-3668; e-mail
Carol.Gallagher@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Telephone: 301-415-1462 or e-mail: Timothy.Reed@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

In a letter to Chairman Gregory B. Jaczko dated September 25, 2009, NEI, the petitioner, requested that the NRC undertake an expedited rulemaking to revise the compliance date for specific requirements within Title 10 of the *Code of Federal Regulations* (10 CFR) 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The NRC reviewed the request for rulemaking and determined that the request met the minimum sufficiency requirements of 10 CFR 2.802, "Petition for Rulemaking" and, therefore, was considered as a petition for rulemaking. Accordingly, the NRC docketed the request as PRM-73-14 and notified the petitioner of this decision by letter dated October 1, 2009. Due to the exigent circumstances associated with the request, the NRC did not prepare a notice of receipt and request for comment, and instead gave immediate consideration to the request, convening a petition review board (PRB) on November 9, 2009.

The petitioner requested the NRC amend its regulations to change the compliance date for specific requirements of 10 CFR part 73 to December 31, 2010, based on the results of an industry survey conducted by NEI. The petitioner states that 24 sites will seek scheduler exemption requests from the March 31, 2010 compliance date, and 9 more sites are evaluating the need for exemptions. The petitioner states that two provisions of the new Power Reactor Security rule, namely 10 CFR 73.55(e) "Physical barriers" and 10 CFR 73.55(i) "Detection and assessment systems" will be the subject of nearly all the exemption requests.

In support of this request the petitioner notes that the subject provisions of 10 CFR 73.55 are problematic because these provisions may require physical modifications to the plant and involve engineering analysis, design, equipment procurement, installation, testing, and related training. The petitioner indicates that absent a rule change to modify the implementation date, both NRC and industry would be required to divert vast resources to review and approve

exemption requests for potentially more than half of the power reactor sites. The petitioner states that these same resources are needed to finalize the remaining regulatory guidance for implementation of the new Power Reactor Security rulemaking.

The petitioner states that the nuclear energy industry has fully implemented numerous new security provisions and enhancements since the terrorist attacks of September 11, 2001, including NRC orders, an enhanced design basis threat, and numerous threat advisories. Additionally, the petitioner notes that NRC has conducted baseline inspections of industry actions to address large fires and explosions, and has evaluated force-on-force exercises for the past 7 years. The petitioner states that industry has been proactive in many initiatives that strengthen nuclear power reactor security. These initiatives were undertaken with the U.S. Department of Homeland Security, the Federal Bureau of Investigation, and local law enforcement authorities. Finally, the petitioner notes that all these activities have resulted in nuclear power plants being recognized as the most protected and secure of domestic private industrial facilities.

NRC Evaluation

The NRC reviewed the petition and reached the following conclusions:

- Revising the compliance date established by the final Power Reactor Security rulemaking would require the NRC to undertake a notice and comment rulemaking.
- The data contained in PRM-73-14 does not provide enough information to currently support the NRC assembling a proposed rule that would contain a sufficiently robust regulatory basis.
- The NRC would need to interact with external stakeholders to develop the additional supporting information necessary for completing an adequate notice and comment rulemaking.
- There is not sufficient time, before the new Power Reactor Security rule compliance date of March 31, 2010, to allow the NRC to collect and analyze the necessary data and complete an adequate notice and comment rulemaking. This is due, in part, to statutory rulemaking process requirements under the Administrative Procedure Act (i.e., development, approval, and issuance of a proposed rule; adequate public comment period; processing and analysis of stakeholder comments; development, approval, and issuance of a final rule; approval of the final rule by OMB if there are paperwork provisions).

- If the NRC were to pursue a more narrow revision to the compliance provisions of 10 CFR 73.55, this rule would require the NRC to tailor rule provisions to specific facilities and situations. Developing this more complex and specific compliance language with the supporting regulatory basis would, at a minimum, require additional interactions with external stakeholders.

- Revising the 10 CFR 73.55 compliance date is an overly broad solution to the petitioner's problem. A revision to the compliance date would relieve all power reactor licensees from implementing all the new requirements by March 31, 2010. However, it is clear that according to the data provided by the petitioner, that fewer than half of the licensees intend to request relief, and the requirements in the new rule that seem particularly problematic represent a very small percentage of the total number of requirements in the rule. Under such circumstances, the exemption process appears to be the best regulatory tool to address the situation. The staff is currently addressing this potential license compliance issue through review of scheduler exemptions.

Public Comments on the Petition

Due to the exigent circumstances associated with the request, the NRC did not prepare a notice of receipt and request for comment, and instead gave immediate consideration to the request. Accordingly, there are no public comments on this petition.

Determination of Petition

For reasons cited above, the NRC is denying PRM-73-14.

Dated at Rockville, Maryland, this 2nd of March 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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