

periods. For example, documentation regarding the 2006 campaign, which would include selection of the PCFO in March of 2006 through the final distribution of contributions in approximately March 2008, must be retained through the completion of the 2007, 2008 and 2009 campaign periods (*i.e.* until approximately March 2011). Documents requested by OPM must be made available within 10 business days of the request.

26. Amend § 950.801 as follows:

a. In paragraph (a)(1), remove the text “one 30-day calendar day” and add in its place the word “a”, remove the text “January and March” and add in its place the text “December and January”, and add the text “and international” to the last sentence after the word “national”;

b. Revise paragraph (a)(2);

c. In paragraph (a)(3), remove the date “March 15” and add in its place “a date to be determined by OPM. The date will be part of the annual timetable issued by the Director under § 950.801(b).”;

d. In paragraph (a)(4), remove the text “June 30” and add in its place “a date to be determined by OPM. The date will be part of the annual timetable issued by the Director under § 950.801(b).”;

e. In paragraph (b), add the text “and international” in the first sentence after the word “national”, and add a second sentence to read as follows: “The Director will issue the timetable for a campaign period no later than October 31 of the year preceding the campaign period.”

The amendments to § 950.801 read as follows:

§ 950.801 Campaign schedule.

(a) * * *

(2) The Director will determine a date after the closing of the receipt of applications by which the Director will issue notices to each national and international applicant organization of the results of the Director’s review. The date will be part of the annual timetable issued by the Director under § 950.801(b).

* * * * *

27. Amend § 950.901 as follows:

a. In paragraph (c)(1), remove the text “printed or purchased from a central source” and add in its place “reproduced”, and remove the word “distributed” and add in its place “made available”;

b. In paragraph (c)(2), add the word “paper” after the word “each”, and add the text “or an acceptable electronic version” after the word “authorization”;

c. In paragraph (f)(1), add the text “pay period number,” after the word “period,”; and

d. Revise paragraphs (i)(1) and (i)(2).
The amendments to § 950.901 read as follows:

§ 950.901 Payroll allotment.

* * * * *

(i) * * *

(1) The PCFO shall notify the federations, national and international organizations, and local organizations as soon as practicable after the completion of the campaign, but in no case later than a date to be determined by OPM, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them. The date will be part of the annual timetable issued by the Director under § 950.801(b).

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit disbursements at least quarterly, minus the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106. It shall remit the contributions to each organization or to the federation, if any, of which the organization is a member. The PCFO will distribute all CFC receipts beginning April 1, and quarterly thereafter. At the close of each disbursement period, the PCFO’s CFC account shall have a balance of zero.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FVO6–966–1 PR]

Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed partial exemption to the minimum grade requirements under the marketing order for tomatoes grown in Florida (order). The Florida Tomato Committee (Committee) locally administers the order. Under the order, Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule would exempt UglyRipe™ (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change would increase the volume of UglyRipe tomatoes that would meet the order requirements, and would help increase

shipments and availability of these tomatoes.

DATES: Comments must be received by August 28, 2006.

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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: moab.docketclerk@usda.gov; or Internet: <http://www.regulations.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: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324–3375, Fax: (863) 325–8793, or e-mail William.pimental@usda.gov; or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324–3375, Fax: (863) 325–8793, or e-mail: Christian.nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; 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 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 (USDA) 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 USDA 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, USDA 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 USDA'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 invites comments on a proposed partial exemption to the minimum grade requirements prescribed under the order. The order's rules and regulations specify that Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule would exempt UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change would increase the volume of UglyRipe tomatoes that would meet the order requirements, and would help increase shipments and availability of these tomatoes. In addition, it is anticipated that this change would help promote continued innovation within the industry.

Section 966.52 of the order provides the authority for the establishment of grade and size requirements for Florida tomatoes. Form and shape represent part of the factors of grade. Section 966.323 of the order's rules and regulations specifies, in part, the minimum grade requirements for Florida tomatoes. The current minimum grade requirement for Florida tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855–51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two factors relate specifically to the shape of the tomato. The definitions section of the

Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved. This rule would amend § 966.323 to exempt UglyRipe tomatoes from these shape requirements as specified under the grade for a U.S. No. 2.

UglyRipe tomatoes are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. UglyRipe tomatoes are often shaped differently from other round tomatoes. Depending on the time of year and the weather, UglyRipe tomatoes are concave on the stem end with deep, ridged shoulders. They can also appear kidney shaped and lopsided. Because of this variance in shape and appearance, UglyRipe tomatoes can have difficulty meeting the shape requirements of the U.S. No. 2 grade.

This rule would provide UglyRipe tomatoes with a partial exemption from the grade requirements under the order. UglyRipe tomatoes would only be exempt from the shape requirements of the grade and would still be required to meet all other aspects of the U.S. No. 2 grade. The UglyRipe tomato continues to be required to meet all other requirements under the marketing order, such as size, pack and container, and inspection.

Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. Committee members agree that increasing the grade requirement has been very beneficial to the industry and in the marketing of Florida tomatoes. Further, some Committee members have stated that a large part of the volume of the standard commercial varieties of tomatoes which fail to make the grade are rejected because of their shape and appearance. Consequently, there was some industry concern that providing an exemption for the UglyRipe tomato could result in the shipment of U.S. No. 3 grade tomatoes of other varieties, contrary to the objectives of the exemption and the order.

To address this concern, the producers of UglyRipe tomatoes pursued entry into USDA's Identity Preservation (IP) program. This program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique

product at every stage, from seed, production and processing, to distribution. The UglyRipe tomato was granted positive program status in early 2006.

This partial exemption would only extend to UglyRipe tomatoes covered under the IP program. As such, this should help ensure that only UglyRipe tomatoes would be shipped under the proposed exemption. In addition, this exemption would be contingent upon the UglyRipe tomatoes continuing to meet the requirements of the IP program.

This rule would exempt UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change would increase the volume of UglyRipe tomatoes that would meet order requirements, and would help increase shipments and availability of these tomatoes.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would provide a partial exemption to the minimum grade requirements under the domestic handling regulations, a corresponding change to the import regulations would also need to be accomplished. A proposed rule that would provide a similar partial exemption to the minimum grade requirements under the import regulations will be issued as a separate action.

Initial Regulatory Flexibility Analysis

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 there under, 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 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those

having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2004–05 season was approximately \$12.50 per 25-pound container, and fresh shipments totaled 53,025,915 25-pound cartons of tomatoes. Committee data indicates approximately 27 percent of the handlers handle 95 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule would provide a partial exemption to the minimum grade requirements for tomatoes grown in Florida. Under the order, Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule would exempt UglyRipe tomatoes from the shape requirements specified under the Standards for a U.S. No. 2 grade. This change would increase the volume of UglyRipe tomatoes that would meet the order requirements, and would help increase shipments and availability of these tomatoes for consumers. This rule would amend the provisions of § 966.323. Authority for this action is provided in § 966.52 of the order.

This change would represent a small increase in costs for producers and handlers of UglyRipe tomatoes, primarily from costs associated with developing and maintaining the IP program. However, the majority of facilities associated with UglyRipe tomatoes were involved with the IP program prior to this proposed rule and have already received a successful audit. Therefore, the additional costs associated with this action would be those costs related to maintaining and complying with the IP program. It is anticipated that these costs would be minimal.

In addition, this rule would make additional volumes of UglyRipe tomatoes available for shipment. This should result in increased sales of UglyRipe tomatoes. Consequently, the benefits of this action should more than offset the associated costs.

One alternative to this action that was considered was to not provide an exemption from shape requirements for UglyRipe tomatoes. However, providing the exemption would increase the volume of UglyRipe tomatoes that would meet the order requirements, and would help increase shipments and availability of these tomatoes. Therefore, this alternative was rejected.

This rule would not impose any additional reporting or recordkeeping requirements beyond the IP program 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.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

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 proposed partial exemption to the minimum grade requirements prescribed under the order. A 60-day comment period is provided to allow interested persons to respond to this proposal. 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. Amend § 966.323, by adding a new paragraph (d)(5) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(d) * * *

(5) *For UglyRipe™ tomatoes.* UglyRipe™ tomatoes must meet all the requirements of this section: *Provided*, That UglyRipe™ tomatoes shall be graded and at least meet the requirements specified for U.S. No. 2 under the U.S. Standards for Grades of Fresh Tomatoes, except they are exempt from the requirements that they be reasonably well formed and not more than slightly rough, and *Provided*, Further that the UglyRipe™ tomatoes meet the requirements of the Identity Preservation program, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA.

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Dated: June 26, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–5833 Filed 6–27–06; 12:01 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 980

[Docket No. FV06–980–1 PR]

Vegetables, Import Regulations; Partial Exemption to the Minimum Grade Requirements for Fresh Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed partial exemption to the minimum grade requirements under the tomato import regulation. The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act). Section 8e requires imported tomatoes to meet the same or comparable grade and size requirements as those in effect under Federal Marketing Order No. 966 (order). The order regulates the handling of tomatoes grown in Florida. A separate proposed rule to amend the rules and regulations under the order to exempt UglyRipe (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued by Department of Agriculture (USDA). This rule would provide the same partial exemption under the import regulation so it would conform to the regulations for Florida tomatoes under the order.