**§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Brazil and Costa Rica.**

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the State of Espirito Santo, Brazil, and the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in the State of Espirito Santo, Brazil, or in the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ½ or more ripe (more than ¼ of the shell surface yellow), and all culled and fallen fruits were buried, destroyed, or removed from the farm at least twice a week.

(c) The papayas were treated with a hot water treatment consisting of 20 minutes in water at 49 °C (120.2 °F).

(d) When packed, the papayas were less than ½ ripe (the shell surface was no more than ¼ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(e) The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

(f) All cartons in which papayas are packed must be stamped ''Not for importation into or distribution in HI.''

(g) All activities described in paragraphs (a) through (f) of this section were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

(h) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than 7 Medflies per trap per week, measures were taken to control the Medfly population in the production area. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(i) If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

(j) In the State of Espirito Santo, Brazil, if the average McPhail trap catch was greater than 7 South American fruit flies (*Anastrepha fraterculus*) per trap per week, measures were taken to control the South American fruit fly population in the production area. If the average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

(k) All shipments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

(Approved by the Office of Management and Budget under control number 0579–0128)

Done in Washington, DC, this 10th day of March 1998.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98–6536 Filed 3–12–98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Parts 966 and 980

**[Docket No. FV98–966–1 FR]**

## Tomatoes Grown in Florida and Imported Tomatoes; Final Rule to Change Minimum Grade Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule increases the minimum grade requirements for Florida and imported tomatoes. The grade requirements are changed from U.S. No. 3 to U.S. No. 2. The change in grade requirements will help the Florida tomato industry meet domestic market needs, increase returns to producers, and provide consumers with higher quality tomatoes. Application of the increased grade requirements to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

**EFFECTIVE DATE:** March 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 301 Third Street, N.W., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, 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) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, 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) 205–6632.

**SUPPLEMENTARY INFORMATION:** This final 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 final 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.

Section 8e of the Act specifies that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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 are specified in § 966.323 of the handling regulation issued under the order. These requirements apply during the period October 10 through June 15 each year. The regulated area includes the portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. That is, the entire State of Florida, except the panhandle. The production area is part of the regulated area. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single and double layer place packed tomatoes are exempt from container net weight requirements.

Under § 966.323, all tomatoes, except for pear shaped, paste, cherry, hydroponic, and greenhouse tomatoes, must be inspected as specified in the United States Standards for Grades of Fresh Tomatoes (7 CFR part 51.1855 through 51.1877; standards). Through February 3, 1998, such tomatoes had to be at least $2\frac{8}{32}$ inches in diameter, and sized with proper equipment in one or more of the following ranges of diameters.

| Size designation | Inches minimum diameter | Inches maximum diameter. |
|---|---|---|
| Medium | $2\frac{8}{32}$ | $2\frac{17}{32}$ |
| Large | $2\frac{16}{32}$ | $2\frac{25}{32}$ |
| Extra Large | $2\frac{24}{32}$ | ..... |

These size designations and diameter ranges are the same as specified in § 51.1859 of the standards. All tomatoes in the Medium size designation were required to grade at least a U.S. No. 2, while tomatoes in the larger size designations were only required to grade at least a U.S. No. 3. Section 966.52 of the order provides authority for the establishment and modification of regulations applicable to the handling of particular grades, sizes, and size designations of tomatoes.

This rule increases the minimum grade requirements from U.S. No. 3 to U.S. No. 2 for all tomatoes regardless of size. This change in grade requirements was recommended by the Florida Tomato Committee (Committee) on September 5, 1997, by a vote of 10 in favor and 2 opposed. The grade requirement change eliminates shipments of U.S. No. 3 grade tomatoes from the regulated area. The opponents of this change stated that there were good markets for U.S. No. 3 tomatoes in years of short supply, and when crop quality was down due to adverse weather conditions. The members in favor countered stating that during normal seasons U.S. No. 3 grade tomatoes comprised a small share of total shipments and that such shipments had a price depressing effect on the higher quality tomatoes shipped during those seasons.

At the same meeting, the Committee unanimously recommended an increase in the diameter size requirement for Florida tomatoes from $2\frac{8}{32}$ inches to $2\frac{9}{32}$ inches, that the size designations of Medium, Large, and Extra Large be changed to numeric size designations of 6×7, 6×6, and 5×6, respectively, and that the diameter size ranges for the designated sizes be increased slightly. These size ranges are different from those specified in § 51.1859 of the standards. The minimum size and size designation changes were addressed in a separate rulemaking action. That action was published in the **Federal Register** on October 6, 1997 (62 FR 52047). Interested persons were invited to submit written comments until October 16, 1997. Subsequently, the period for comments was reopened until November 5, 1997, by a document published in the **Federal Register** on October 22, 1997 (62 FR 54809). After evaluating all comments received, the Department issued a final rule on December 30, 1997, implementing the recommended size increase and size designation changes. That final rule was published on January 5, 1998, with the changes effective on February 4, 1998 (63 FR 139).

The changes in that final rule require tomatoes to be at least $2\frac{9}{32}$ inches in diameter, and sized with proper equipment in one or more of the following ranges of diameters (63 FR 139; January 5, 1998). These size designations and diameter ranges are not the same as those specified in § 51.1859 of the standards.

| Size designation | Inches minimum diameter | Inches maximum diameter |
|---|---|---|
| 6×7 (Formerly Medium) | $2\frac{9}{32}$ | $2\frac{19}{32}$ |
| 6×6 (Formerly Large) | $2\frac{17}{32}$ | $2\frac{27}{32}$ |
| 5×6 (Formerly Extra Large) | $2\frac{25}{32}$ | ..... |

Based on an analysis of markets and demands of buyers, the Committee believes that increasing the minimum grade from U.S. No. 3 to U.S. No. 2 will improve the marketing of Florida and foreign produced tomatoes, and protect the entire market from the price depressing effects of poorer quality tomatoes from both domestic and foreign supply sources. The increase in grade requirements is expected to prevent low-quality tomatoes from reaching the marketplace, and improve the overall quality of tomatoes in fresh market channels. This is expected to benefit the marketers of both Florida and imported tomatoes.

Tomatoes grading U.S. No. 3 must be well developed, may be misshapen, and cannot be seriously damaged by sunscald (7 CFR 51.1858). Tomatoes grading U.S. No. 2 have to be well developed, reasonably well-formed, and free from sunscald (7 CFR 51.1857). Sunscald is an injury which usually occurs on the sides or upper half of the tomato, but may occur wherever the rays of the sun strike most directly. Sunscald results in the formation of a whitish, shiny, blistered area on the tomato. The affected tissue gradually collapses, forming a slight sunken area that may become pale yellow, and wrinkle or shrivel as the tomato ripens. This detracts from the overall quality of the tomato.

The difference between tomatoes grading U.S. No. 3 and U.S. No. 2 with regard to development, shape, and sunscald is especially noticeable in smaller sized tomatoes, but also noticeable in larger sized tomatoes. U.S. No. 3 grade tomatoes are generally of very poor quality, and are not desired by the consumer.

The Committee indicated that when tomatoes of this quality are offered for sale to consumers in a normal season these tomatoes have an adverse affect on the demand and sale of other Florida tomatoes. The increase in grade requirements is expected to improve the quality of the tomato packs shipped from Florida.

The proponents of the change indicated that the marketplace is

changing and that the Florida industry has been shipping fewer U.S. No. 3 grade tomatoes than it had in past seasons in response to those changes. During the last three shipping seasons, the quantity of U.S. No. 3 grade tomatoes shipped as a percentage of total shipments ranged from a low of 4.4 percent to a high of 7.6 percent.

At the meeting, the Committee discussed whether eliminating U.S. No. 3 tomatoes would diminish the quality of the U.S. No. 2 grade pack by handlers trying to commingle more U.S. No. 3 grade as U.S. No. 2 grade. The proponents acknowledged that some of the tomatoes currently being sold at the U.S. No. 3 grade could be reworked to make U.S. No. 2 grade. They stated, however, that they were interested in eliminating the true U.S. No. 3 grade which in normal seasons has tended to detract from the overall pack and depress prices for higher quality tomatoes.

The grade increase is expected to improve the overall tomato pack, provide consumers with the quality of tomatoes desired, and, thus, encourage repeat purchases. In other words, the new grade requirements will allow handlers to respond better to market preferences which is expected to benefit producers and handlers of Florida tomatoes.

Section 8e of the Act requires 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, or maturity requirements for the domestically produced commodity. The current import regulations are specified in 7 CFR 980.212. Similar to the order, regulations apply during the period October 10 through June 15 when the Florida handling requirements are in effect. Because this action increases the minimum grade for domestic tomato shipments, this increase will apply to imported tomatoes.

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. Because pack requirements do not apply, different sizes of imported tomatoes may be commingled in the same container.

Beginning February 4, 1998, and until the effective date of this final rule import requirements specify that all lots with a minimum diameter of $2\frac{19}{32}$ inches and larger shall meet at least a U.S. No. 3 grade. All other tomatoes shall meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than $2\frac{19}{32}$ inches in diameter is required to grade at least U.S. No. 2. This final rule changes these requirements by requiring all lots of imported tomatoes to grade at least U.S. No. 2, regardless of size.

This change is expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with the higher quality tomatoes they desire. The Department contacted a few tomato importers concerning imports. The importers indicated that they will not have difficulty meeting the U.S. No. 2 grade requirements. Thus, the Department believes that the increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction should benefit all tomato importers regardless of size.

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, the AMS has prepared this final 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 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. Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this final rule will have small entity orientation, and will impact both small and large business entities in a manner comparable to those rules issued under marketing orders.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. In addition, at least 170 importers of tomatoes are subject to import regulations and would be affected by this final rule. Small agricultural service firms have been defined by the Small Business Administration (SBA)(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.

Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1996–97 season, and the 1996–97 season average price of $7.97 per 25 pound equivalent carton, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities. Moreover, the Department believes that most importers may be classified as small entities.

Under § 966.52 of the Florida tomato marketing order, the Committee, among other things, has authority to recommend changes in the minimum grade requirements for tomatoes grown in the defined production area and handled under the order. This final rule increases the minimum grade from U.S. No. 3 to U.S. No. 2. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the grade increase must apply to imported tomatoes.

The Committee recommended the grade increase to improve the marketing of Florida tomatoes and follow the recent industry trend of shipping higher grade tomatoes. This trend is in response to a strong consumer demand for such tomatoes. The Committee noted that a U.S. No. 3 grade tomato can have a negative impact on the market for higher quality tomatoes.

According to the Committee, when supplies are not short or crop quality is not lowered due to adverse weather conditions, U.S. No. 3 grade tomatoes comprise a small share of total shipments. During the last three shipping seasons, the quantity of U.S. No. 3 grade shipped as a percentage of total shipments ranged from a low of 4.4 percent to a high of 7.6 percent. Thus, the increase in the minimum grade requirements is not expected to significantly impact the total number of Florida shipments. It is, however, expected to have a positive effect in the marketplace by providing a strong price base for the industry. As mentioned earlier, the Committee believes that U.S. No. 3's have a price depressing effect on higher grade shipments.

According to the Committee, during the 1996–97 season, about 47.9 million 25 pound equivalents were shipped from Florida. Of that amount, only 4.9 percent were U.S. No. 3 grade. The value of all sales during that season totaled about $381.4 million. The value of the U.S. No. 3 grade tomatoes totaled about $16.6 million, or about 4.4 percent of total sales during that season. In 1995–96, the total of all tomatoes shipped was 47.3 million 25 pound

equivalents. The U.S. No. 3 grade portion was 7.9 percent. That season, the value of all sales totaled about $369.7 million, and the U.S. No. 3's comprised 7.6 percent of the total value. The percentages for the 1994–95 season were similar with U.S. No. 3's making up about 6.8 percent of the total shipments, and the sales value of the U.S. No. 3 grade making up about 6.1 percent of the total value. That season, total industry shipments totaled about 55.5 million 25 pound equivalents, and the total value was about $388.3 million.

The Committee also noted that a recent voluntary elimination of U.S. No. 3 grade by the industry had been successful in strengthening the market and in supporting grower returns. This action is expected to continue those successes. Without an increase in grade requirements, the Committee believes that an erosion of market confidence and producer returns could occur.

The raising of the minimum grade from U.S. No. 3 to U.S. No. 2 is expected to impact all handlers uniformly, whether small or large, because all handlers, regardless of size, currently pack about the same percentage of U.S. No. 3 grade tomatoes. The benefits of the higher prices resulting from eliminating the U.S. No. 3's will be distributed evenly among all handlers, and are expected to be greater than the minimal costs expected to be incurred.

Direct costs to the industry associated with the minimum grade requirement increase will include sorting and packing line adjustments to operate under the new requirements. These costs are expected to be minimal relative to the benefits expected. Other costs will include possible losses because handlers will no longer be able to ship U.S. No. 3 grade tomatoes outside of the regulated area, as defined in the marketing order. However, these losses also are expected to be minimal because tomatoes lower in quality than U.S. No. 2 could continue to be shipped within the regulated area, or shipped for processing.

Foreign tomato shippers also have alternative markets for lower grade tomatoes which should lessen any losses as a result of this action. That is, foreign tomatoes lower in grade than U.S. No. 2 could be marketed in locations other than the United States.

Additionally, the marketplace price and quality benefits expected for Florida growers and handlers as a result of this action will also benefit exporters and importers of tomatoes. Consumers will also benefit as a result of the higher quality product available in the marketplace. As mentioned earlier, the benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including leaving the grade requirements unchanged. However, after thoroughly discussing the issue the majority of the Committee members agreed that the grade increase was necessary to improve pack appearance and effectively compete in the present market. During the discussion, most Committee members acknowledged that U.S. No. 3 grade tomatoes could be important to the market in years of short supply and lower than normal quality resulting from adverse weather conditions. However, those members also pointed out that during normal seasons U.S. No. 3 tomatoes were not popular in the marketplace, and that the lower grade had a price depressing effect on better grade tomatoes.

Mexico is the largest exporter of tomatoes to the United States. Over the last 10 years, Mexican exports to the United States averaged 32,527,000 containers of 25 pound equivalents per season (October 5–July 5) and comprised about 99 percent of all imported tomatoes to the United States during that time. Total imports during that period averaged 32,752,000 containers of 25 pound equivalents (October 5–July 5). Some of the imports from Mexico may have been transhipped to Canada. Small quantities of tomatoes are imported from Caribbean Basin countries. Domestic shipments for the past 10 years averaged 108,577,000 containers of 25 pound equivalents (October 5–July 5). Florida shipments comprised about 48 percent of the total shipments for the same period. This information is from AMS Market News Branch data that most closely approximates the Florida shipping season.

The grade increase is expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with higher quality tomatoes. The Department contacted a few tomato importers concerning imports. The importers indicated that they will not have undue difficulty meeting the higher grade requirements. Also, Department fresh products inspectors at the Port of Nogales, Arizona, the port where most Mexican produced tomatoes enter the United States, estimated that only 2 to 3 percent of the total tomato imports from Mexico were U.S. No. 3 grade. The remainder were U.S. No. 2 grade and higher. Thus, the Department believes that the increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction and more positive marketplace atmosphere resulting from providing the desired quality should benefit all tomato importers regardless of size.

This action will not impose any additional reporting or record keeping requirements on either small or large 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 proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. One comment on the regulatory impacts of this action was received from a handler of Florida tomatoes and is discussed below.

The proposed rule regarding this action was published in the **Federal Register** on December 18, 1997 (62 FR 66312). Interested persons were invited to submit written comments until January 20, 1998. Copies of the proposed rule were faxed and mailed to all known interested persons. Also, the rule was made available through the Internet by the Office of the Federal Register. A total of 11 comments were received.

Seven favorable comments were received. One comment was received from a voluntary agricultural cooperative association of Florida tomato producers representing about 90 percent of the total volume of tomatoes produced under the marketing order each year. Another comment was received from a cooperative agricultural association composed of first handlers of fresh Florida tomatoes grown in Central and South Florida. An association representing the interests of fruit and vegetable growers throughout Florida also supported the proposed grade increase. A comment was received from the Commissioner of the Florida Department of Agriculture and Consumer Services supporting the

proposed grade increase. These commenters supported the belief that increasing the minimum grade requirements from U.S. No. 3 to U.S. No. 2 will help increase customer satisfaction, improve demand, and improve the overall quality of tomatoes in the market.

The Committee also submitted a favorable comment. In its comment, the Committee mentioned that the statement in the proposed rule at column one on page 66313 of the **Federal Register** (62 FR 66313; December 18, 1997) stating that ''Based on an analysis of markets and demands of buyers, the Committee believes that increasing the minimum grade from U.S. No. 3 to U.S. No. 2 would improve the marketing of Florida tomatoes, and help the industry protect its markets from foreign competition.'' misleads and confuses the reader. The Committee asserted that the proposed rule is not intended to limit and, in fact, would not protect the Florida tomato industry from foreign competition. The proposal is designed to protect the entire market from the price depressing effect of poorer quality tomatoes from both domestic and foreign supply sources and would provide a better product for the consumer. Accordingly, this statement has been clarified in the final rule. The Committee also suggested that the use of 25 pound and 25,000 pound equivalents in different parts of the proposed rule could confuse the reader, and suggested that only 25 pound equivalents be used because this is the common standard used by the Florida industry. Appropriate modifications have been made in response to these suggested changes.

Another favorable comment was received from a national confederation of Mexican vegetable growers indicating that the increase in requirements for minimum grade to U.S. No. 2 will help improve the overall quality of tomatoes in the market and will contribute to better marketing and increase the growers' income.

A final favorable comment was received from a trade association representing over 100 distributors, shippers, brokers, and affiliated companies who are directly involved with the receipt, handling, and sale of perishable agricultural commodities grown in the Republic of Mexico. This comment supported the proposal to increase the minimum grade requirement to U.S. No. 2, but expressed the belief that the proposed change does not tighten quality restrictions enough. The trade association requested the Department to establish a minimum grade of 85 percent U.S. No. 1.

The trade association stated that it strongly agrees that the presence of U.S. No. 3 tomatoes in the marketplace hurts grower returns. The comment pointed out that tomatoes grading U.S. No. 2 are of poor cosmetic quality and this discourages many shoppers from buying tomatoes. The comment noted that with the rapid expansion of the availability and affordability of greenhouse-grown tomatoes, field grown tomatoes are now in direct competition for shelf-space and consumer demand with greenhouse tomatoes. The comment stated that if the intent of the proposed rule is to have a positive effect in the marketplace by providing a strong price base for the industry, the minimum grade requirement should be tightened to 85 percent U.S. No. 1 or better.

It would not be appropriate to act upon this recommended change at this time. The recommended change is more restrictive than proposed. Because of this, AMS believes that further review and analysis is needed and that notice and comment rulemaking should be used before implementation. Also, this recommended change has been sent to the Committee for future consideration.

Four opposition comments were received. These comments were from handlers of Florida tomatoes, and an import broker. The Florida handlers stated that this past fall, as well as several occasions last season, overall tomato demand and price allowed them to pack and sell all of their U.S. No. 3 grade tomatoes above the minimum price in effect for Mexican grown tomatoes through the settlement of a trade action brought against Mexico. One of these handlers indicated that had the grade increase been implemented earlier, it would have caused an economic loss to farms in Florida, as they were able to sell all of the U.S. No. 3 tomatoes they packed. Another handler stated that the elimination of U.S. No. 3 grade tomatoes would reduce the overall grade due to commingling of the product, and that the proposal was a step backward in competing with their international competitors. All three of the Florida handlers pointed out that there is currently a mechanism in place under a tomato growers exchange that would remove U.S. No. 3 grade tomatoes from the market under a certain pricing structure. However, not all Florida production would be covered by this mechanism at all times. The import broker indicated that there was a market for lower priced imported U.S. No. 3 grade tomatoes.

As indicated earlier, in making its recommendation the Committee discussed leaving the grade requirements unchanged. However, after discussing the merits of this alternative, the majority of the Committee members agreed that the grade increase was necessary to improve pack appearance and effectively compete in a market whose buyers are requesting higher quality product. These members acknowledged that U.S. No. 3 tomatoes could be important to the market in years of short supply and lower than normal quality resulting from adverse weather conditions. They also pointed out that during normal seasons U.S. No. 3 tomatoes were not popular in the marketplace, and that the lower grade had a price depressing effect on better grade tomatoes.

Opposition commenters may have been able to market their U.S. No. 3 grade tomatoes because a small market exists for such tomatoes. However, the Committee made its recommendation because it believes that higher quality and the expansion of consumer demand are keys to improving the tomato industry in the long term. When short term quality problems occur due to adverse weather or other causes and sufficient supplies of U.S. No. 2 or better grade tomatoes are not available to meet market needs, appropriate action could be taken to address such problems. The Committee could meet and request the Department to implement emergency rulemaking which would allow handlers to ship tomatoes lower than U.S. No. 2 grade.

The proponents of the change on the Committee acknowledged that some of the tomatoes currently being sold at the U.S. No. 3 grade level could be reworked to make U.S. No. 2 grade. However, they indicated that they were interested in eliminating the true U.S. No. 3 grade which has depressed the market for better quality tomatoes in normal seasons.

Most of the commenters requested that the proposed grade increase be implemented as soon as possible. The need for prompt implementation is appropriate because Florida handlers are more than half-way through the 1997–98 shipping season, and they want to accrue the benefits anticipated. Moreover, the comment from the trade association representing importers requested prompt action stating that there is little modification that must be made to existing packing equipment that would result in unusual additional expenditures for importers or packers. However, sufficient time must be provided for the Florida and import tomato industries to comply with the new grade requirement and to allow tomatoes already picked and packed, and certified as U.S. No. 3 grade to be shipped. Further, handlers and

exporters need to adjust their sorting and packing lines to meet the higher grade requirement. Therefore, the Department has decided that the effective date of this action should be March 30, 1998. This period of time is reasonable and consistent with the provisions of the Act, and will allow both the domestic and imported tomato industries sufficient time to adjust to the new grade requirement and to ship commodity that is already picked and packed.

In view of all the foregoing, the Department has concluded that the increase in the minimum grade requirement from U.S. No. 3 to U.S. No. 2 will advance the interests of the Florida and foreign tomato industries and should be implemented.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, and the comments received, it is hereby found that this 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 that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Florida tomato handlers are aware of this action, which was discussed at various industry and association meetings and was recommended by a majority of the Committee; (2) the Committee meeting was a public meeting and all interested parties had an opportunity to provide input; (3) the grade increase needs to be in place as soon as possible to cover the balance of the 1997–98 shipping season which ends in June; and (4) an adequate amount of time has been provided for handlers and importers to adjust their packing and sorting lines to meet the higher grade requirement.

**List of Subjects**

*7 CFR Part 966*

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

*7 CFR Part 980*

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are amended as follows:

1. The authority citation for 7 CFR parts 966 and 980 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 966—TOMATOES GROWN IN FLORIDA

2. In § 966.323, paragraph(a)(1) is revised to read as follows:

**§ 966.323 Handling regulation.**

* * * * *

(a) *Grade, size, container, and inspection requirements.* (1) Grade. Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, or U.S. No. 2 of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of the tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than 1 percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

## PART 980—VEGETABLES; IMPORT REGULATIONS

3. In § 980.212, paragraph (b)(1) is revised to read as follows:

**§ 980.212 Import regulations; tomatoes.**

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2 9/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots of tomatoes shall be at least U.S. No. 2 grade.

* * * * *

Dated: March 9, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–6618 Filed 3–12–98; 8:45 am]

BILLING CODE 3410–02–P

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## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 614 and 627

**RIN 3052–AB09**

## Loan Policies and Operations; Title IV Conservators, Receivers, and Voluntary Liquidation; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 614 and 627 on February 4, 1998 (63 FR 5721). The final rule amends the regulations governing the funding relationship between a Farm Credit Bank (FCB) or agricultural credit bank (ACB), and a direct lender association or other financing institution (OFI). This rule repealed the requirement that the FCA prior approve the General Financing Agreement between an FCB or ACB and a direct lender association or OFI and eliminated a regulatory direct loan limitation. The rule also amended another regulation to permit the voluntary liquidation of Farm Credit institutions by means of an FCA-approved liquidation plan. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 13, 1998.

**EFFECTIVE DATE:** The regulation amending 12 CFR parts 614 and 627 published on February 4, 1998 (63 FR 5721) is effective March 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: March 10, 1998.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 98–6371 Filed 3–12–98; 8:45 am]

BILLING CODE 6705–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–NM–278–AD; Amendment 39–10385; AD 98–06–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

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

**ACTION:** Final rule.