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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966 and 7 CFR Part 980

[Docket No. FV97-966-1 PR]

Tomatoes Grown in Florida and Imported Tomatoes; Proposed Rule To Change Minimum Size and Size Designation Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the minimum diameter size requirement for Florida and imported tomatoes. For Florida tomatoes alone, the rule would change the size designations from Medium, Large, and Extra Large to numeric size designations of 6 × 7, 6 × 6, and 5 × 6. The rule also would slightly increase the diameter size ranges for the designated sizes. The marketing order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This proposed rule would help the Florida tomato industry meet domestic market and industry demands, provide handlers more marketing flexibility, and increase returns to producers, as well as provide consumers with slightly larger, more mature tomatoes. Application of the size requirement increase to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by October 16, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in

the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 301 Third Street, N.W., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299-4770, Fax: (941) 299-5169; and George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, 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 compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698.

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 (Department) 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 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 regulations issued under the order. These requirements apply during the period October 10 through June 15 each year. The regulated area 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). Such tomatoes also must be at least 28/32 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 8/32	2 17/32
Large	2 16/32	2 25/32
Extra Large	2 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 are required to grade at least a U.S. No. 2, while tomatoes in the larger size designations are 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 sizes and size designations of tomatoes.

This rule would increase the minimum diameter size requirement for Florida tomatoes from 2⁹/₃₂ inches to 2⁷/₃₂ inches and would make conforming changes to container marking requirements and the regulation for special packed tomatoes. This rule would also rename the size designations from Medium, Large, and Extra Large to numeric size designations of 6 X 7, 6 X 6, and 5 X 6 (respectively), and increase the diameter size ranges for the designated sizes. These size ranges are different from those specified in § 51.1859 of the standards. On September 5, 1997, the Committee met and unanimously recommended these changes. At the same meeting, the Committee recommended by a vote of 10 to 2 to eliminate shipments of U.S. No. 3 grade tomatoes from the regulated area. That proposal will be addressed in a separate rulemaking action.

Based on an analysis of markets and demands of buyers, the Committee believes that the increase in minimum size would improve the marketing of Florida tomatoes. By increasing the minimum size, the tomatoes would be slightly larger and, thus, more mature when packed. This follows recent industry trends to ship larger and more mature tomatoes. New commercial tomato varieties also have resulted in larger sized tomatoes being shipped in response to a strong consumer demand. Because of this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields.

The Committee also recommended the increase in minimum size requirements to improve the uniformity and appearance of tomato packs. The slightly smaller tomatoes in the Medium packs increase the size variability of the pack and are more likely to be immature and have less taste. The current minimum size of 2⁹/₃₂ inches allows these tomatoes to be combined with more mature tomatoes, which lowers the overall quality and price of the pack. This has resulted in complaints from buyers throughout the market.

In the mid-1980's, Dr. Jeffrey K. Brecht, at the University of Florida, did a study of smaller tomatoes. According to his findings, fully mature green tomatoes begin coloring within a few days of harvesting and ripen at 68 degrees Fahrenheit. Since they are not easily identified by a surface indicator (color) of full maturity in green fruit, pickers are forced to rely on size rather than maturity when harvesting tomatoes. The result of this is that tomatoes of 2⁹/₃₂ of an inch may require two weeks or more to begin ripening. Attainment of the full ripe stage requires on average a week to 10 days additional time. Hence, the full ripening process could take as long as four weeks. Tomatoes that take this long to ripen after harvest have been shown to have poor taste. Hence, increasing the minimum size to 2⁹/₃₂ inches for Medium tomatoes is expected to help reduce this problem. Also, consumers are demanding a slightly larger tomato and smaller tomatoes with a less uniform pack have poor consumer acceptance especially in chain stores.

The increase in the minimum size from 2⁸/₃₂ inches to 2⁹/₃₂ inches is not expected to significantly affect the total number of shipments. During the 1996-1997 season, of the 47,879,084 containers of 25,000 pound equivalent shipments, approximately 15 percent or about 7,023,239 shipments of 25,000 pound equivalents from Florida were of the Medium size designation. The Medium size covers a range of 2⁸/₃₂ to 2¹⁷/₃₂ inches or about 9/32 of an inch. The 1/32 increase in size requirements is only expected to reduce total shipments by approximately 1.5 percent.

The Committee also recommended the following new designations and tomato diameter size ranges:

Size designation	Inches minimum diameter	Inches maximum diameter
6 × 7 (Currently Medium)	2 ⁹ / ₃₂	2 ¹⁹ / ₃₂
6 × 6 (Currently Large)	2 ¹⁷ / ₃₂	2 ²⁷ / ₃₂
5 × 6 (Currently Extra Large)	2 ²⁵ / ₃₂	

The current size designations have been in place since 1991, and were designed to provide a uniform basis for marketing tomatoes. However, the numeric designations have continued to be used by marketers and retailers of tomatoes and are an important factor in negotiating price and other terms of trade. Committee members stated that numeric designations are used in negotiating price and other terms of trade and is the terminology used

primarily in marketing tomatoes. Florida tomato handlers found that this difference in terminology hindered their negotiations with buyers, and adversely affected handler and producer returns. The handlers believe that buyers tend to discount Florida tomatoes because the buyers do not have confidence that the Medium, Large, and Extra Large designations correctly correspond with the industry recognized size designations of 6 × 7, 6 × 6, and 5 × 6. Thus, the change in size designations would put the Florida tomato industry on the same terminology basis as the marketers of tomatoes from other growing areas. This also would reduce the chances of market confusion and possible problems with market pricing.

This rule would also increase the minimum and maximum diameter ranges of the three size designations. The net increase for the maximum diameters for the Medium (6 × 7) and Large (6 × 6) size designations would be 1/32 inch. This would result in a 2/32's overlap in the maximum diameters in these size designations to the next larger size. According to the Committee, this would provide a more even distribution of tomato shipments throughout the three size designations, which would enable handlers to make better decisions on which size of tomatoes to pack. For instance, tomatoes that measure at the top end of the Medium size can either be packed with Medium size tomatoes or as a smaller tomato with Large tomatoes. The same increased flexibility would exist for Large tomatoes packed with Extra Large (5 × 6) tomatoes. Such decisions could depend on specific buyer or market demands, on general crop size, and on condition of the tomatoes and prices on each day of packing.

According to the Committee, problems have evolved in sizing some of the newer varieties that are slightly more oblong. To better accommodate sizing of the new varieties, the Committee recommended the changes to the diameter size ranges for the three size designations.

Due to strong consumer demand, during the 1996-1997 season approximately 80 percent of the tomatoes sold were in the Extra Large (5 × 6) size designation. This rule would increase the minimum diameter of the Extra Large (5 × 6) designation to 2²⁵/₃₂ inches from 2²⁴/₃₂ inches with no maximum. Increasing the minimum diameter size of this designation by 1/32 inch for Extra Large (5 × 6) packs, would reduce the number of smaller sized tomatoes for that size designation. Hence, this is expected to decrease size

variability and improve uniformity of this premium pack. Thus, improvements in this size category are expected to further enhance consumer demand resulting in increased returns to producers.

Also, a study conducted by Dr. John J. VanSickle at the University of Florida, estimates that size increases could result in an increase in the overall price of Florida tomatoes. The study indicates that if increasing the size limits shifted 1 percent of the Extra Large (5 × 6) tomatoes into the smaller size categories then prices for Extra Large (5 × 6) tomatoes would increase. The price of Extra Large (5 × 6) tomatoes could increase by .25 percent, the price of Large (6 × 6) tomatoes by .15 percent, and the price of Medium (6 × 7) tomatoes by .07 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations which responds to consumer demand for a more consistent pack and slightly larger tomatoes.

This rule would also make conforming changes to § 966.323 paragraphs (a)(2)(iii) concerning container marking requirements and (d)(3) for special packed tomatoes. This would increase the currently applied minimum size of 2⁸/₃₂ to 2⁹/₃₂ inches in diameter.

Thus, these changes are expected to increase returns to producers by improving size consistency, quality, and maturity, and, thus, encourage repeat purchases from consumers. The new size designations would 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 proposal would increase the minimum size for domestic tomato shipments, this increase would be applicable 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.

However, the handling requirements also specify that tomatoes that are designated as Medium (6 X 7) must meet a U.S. No. 2 grade, while the larger sizes are required to meet a U.S. No. 3 grade. The more stringent grade requirements are applied to the Medium (6 X 7) size designation because of quality problems with smaller tomatoes.

Similarly, current import requirements specify that all lots with a minimum diameter of 2¹⁷/₃₂ 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 2¹⁷/₃₂ inches in diameter is required to grade at least U.S. No. 2. This proposed rule would change these requirements to reflect the changes to the handling requirements by requiring that all lots with a minimum diameter of 2¹⁹/₃₂ inches and larger meet at least a U.S. No. 3 grade. All other tomatoes would need to meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2¹⁹/₃₂ inches in diameter would have to grade at least U.S. No. 2.

These changes are expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with better quality, higher maturity, and slightly larger tomatoes. The Department has contacted a few tomato importers concerning imports. The importers indicated that they are importing larger sizes of tomatoes. Thus, the Department believes that the proposed 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 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 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.

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 proposed 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. Based on this information, the shipment information for the 1996-97 season, and the 1996-97 season average price of \$7.97 per 25,000 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 may be classified as small entities. The Department also believes that most importers may be classified as small entities.

Under § 966.52 of the Florida tomato marketing order, the Committee has authority to increase the minimum size requirement and change the size designations for Florida tomatoes grown in the defined production area and handled under the order. This proposed rule, unanimously recommended by the Committee at its September 5, 1997, meeting, would increase the minimum size, change size designations and corresponding diameter size ranges. As provided under the Agricultural Marketing Agreement Act of 1937, the proposed increases in the minimum diameter size requirements would apply to imported tomatoes.

Based on analysis of markets and demands of buyers, the Committee recommended increasing the minimum size from 2⁸/₃₂ inches to 2⁹/₃₂ inches in diameter and the corresponding minimum sizes for the other two size designations. The Committee believes these size increases will improve the marketing of Florida tomatoes. By increasing the minimum sizes, the tomatoes would be slightly larger and, thus, more mature when packed. This follows recent industry trends to ship larger and more mature tomatoes. Current trends in cultural practices and new commercial tomato varieties also have resulted in larger sized tomatoes being shipped in response to consumer demand for such tomatoes. Because of

this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields and total pounds. While yields increase with larger fruit, the labor costs associated with picking these tomatoes remains fairly constant because producers pick relatively the same number of fruit.

The change in the minimum size was recommended because demand for larger tomatoes has increased over the last five years. This in part is due to the fact that size continues to be a major influence on price. According to Dr. John J. VanSickle of the University of Florida, the percent of Extra Large (5 X 6) tomatoes shipped has increased steadily since 1992-1993 from 43.2 percent to 50 percent in 1996-1997 for mature green tomatoes. Mature green tomatoes are green but are developed enough to continue to fully ripen. Meanwhile, the percent marketed in the Extra Large (5 X 6) size for vine ripe tomatoes has increased from 66.6 percent to 79.2 percent. Vine ripe tomatoes have at least started to break into color from green to tannish-yellow, pink, or red.

The increase in the minimum size from $2\frac{8}{32}$ inches to $2\frac{9}{32}$ inches is not expected to significantly affect the total number of Florida shipments. During the 1996-1997 season, of the 47,879,084 shipments of 25,000 pound equivalents, approximately 15 percent or about 7,023,239 shipments of 25,000 pound equivalents from Florida were in the minimum size designation of Medium. The Medium size currently covers a range of $2\frac{8}{32}$ to $2\frac{17}{32}$ inches or about $9\frac{1}{32}$ of an inch. Because Florida tomatoes are sizing larger than in the past, the proposed increase in size requirements is expected to have a minimal impact on total shipments. As mentioned earlier, the expected decrease is only about 1.5 percent.

Also, this rule would change the size designations from Medium, Large, and Extra Large to numeric size designations of 6 X 7, 6 X 6, and 5 X 6. The rule also would slightly increase the diameter size ranges for the designated sizes.

The Committee stated that, absent a change in the regulations, the erosion of market confidence and producer income could occur. Furthermore, the majority of Committee members stated that voluntary measures had not been effective.

Direct costs associated with this rule would be the purchase of new sizing belts. Sizing belts convey and size fruit during the packing process. Sizing belts, depending on the amount of use, 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 sizing designations, the benefits are expected to outweigh the costs.

A study conducted by Dr. John J. VanSickle at the University of Florida, estimates that size increases would result in an increase in the overall price for Florida tomatoes, and better returns to producers. The study indicates that increasing the size limits would shift some of the Extra Large (5 X 6) tomatoes into the smaller size categories. As a result, a 1 percent decline in the volume of Extra Large (5 X 6) tomatoes would increase in price by .25 percent, the price of Large (6 X 6) tomatoes by .15 percent, and the price of Medium (6 X 7) tomatoes by .07 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations which responds to consumer demand for a more consistent pack with slightly larger tomatoes. The costs to the industry associated with the minimum size and size designation changes would include purchases of new equipment and adjustments to operate under the new requirements. These costs are expected to be minimal relative to the benefits expected.

Returning to the previously used numeric size designations should not have a negative impact on any packer regardless of size. This is a return to common size designations (6 X 7, 6 X 6, and 5 X 6) used throughout the industry, and would help Florida handlers respond to market and consumer demand. The more standard size designations should benefit both small and large businesses in the industry.

This proposed rule may impose some additional costs on handlers, and producers. However, the costs are expected to be minimal, and would be offset by the benefits of the proposal. This proposal is expected to similarly impact importers of tomatoes as far as the slight increase in minimum size is concerned. The Committee believes that this proposed modification would benefit consumers, producers, handlers, and importers. 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 regulations as currently issued. All Committee members agreed that some change to the size designations was necessary to improve pack appearance and compete in the present market. The amount of change

became a concern, with a portion of the Committee favoring a larger size increase and another portion favoring small incremental moves over a period of time. The Committee recommended a compromise to allow individual packing houses leeway to implement the amount of change through a $\frac{2}{32}$ overlap in sizes.

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 containers of 25,000 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 containers of 25,000 pound equivalents (October 5-July 5). Some of the imports from Mexico may have been transhipped to Canada. Domestic shipments or consumption for the past 10 years averaged 108,577 containers of 25,000 pound equivalents (October 5-July 5). Florida shipments averaged 52,977 containers of 25 pound equivalents or approximately 48 percent of the total shipments or domestic consumption for the same period. This information is from AMS Market News Branch data that most closely approximates the Florida shipping season.

These changes are expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with better quality, higher maturity, and slightly larger tomatoes. The Department has contacted a few tomato importers concerning imports. The importers indicated that they are importing larger sizes of tomatoes. Thus, the Department believes that the proposed 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.

This action would 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 are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible since handlers will begin shipping tomatoes in October. In addition, because of the nature of this rule, handlers need time to adjust their equipment and purchase new equipment to accommodate the new size ranges and designations. Florida tomato handlers are aware of this issue, which has been widely discussed at various industry and association meetings and was unanimously recommended by the Committee. All comments received in a timely manner will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966 and 7 CFR Part 980

Marketing agreements, Reporting and record keeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are 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. Section 966.323 is amended by revising paragraphs (a)(1), (a)(2)(i) and the table immediately following it, (a)(2)(iii), and (d)(3) 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, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes, except that all shipments of 6 x 7 size tomatoes must grade U.S. No. 2 or better. 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.

(2) *Size.* (i) All tomatoes packed by a registered handler shall be at least 2⁹/₃₂ inches in diameter and shall be sized with proper equipment in one or more of the following ranges of diameters. Tomatoes shipped outside the regulated area shall also be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in § 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size Designation	Inches Minimum diameter	Inches Maximum diameter
6 x 7	2 ⁹ / ₃₂	2 ¹⁹ / ₃₂
6 x 6	2 ¹⁷ / ₃₂	2 ²⁷ / ₃₂
5 x 6	2 ²⁹ / ₃₂

* * * * *

(iii) Only 6 x 7, 6 x 6, 5 x 6, may be used to indicate the above listed size designations or containers of tomatoes.

* * * * *

(d) * * *

(3) *For special packed tomatoes.*

Tomatoes which met the inspection requirements of paragraph (a)(4) of this section which are resorted, regraded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from:

(i) The tomato grade classifications of paragraph (a)(1) of this section;

(ii) The size classifications of paragraph (a)(2) of this section, except that the tomatoes shall be at least 2⁹/₃₂ inches in diameter; and

(iii) The container weight requirements of paragraph (a)(3) of this section.

* * * * *

§ 980.212 [Amended]

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2⁹/₃₂ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2¹⁹/₃₂ inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with

more than 10 percent of its tomatoes less than 2¹⁹/₃₂ inches in diameter shall grade at least U.S. No. 2.

* * * * *

Dated: October 2, 1997.

Robert C. Kenney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97-26510 Filed 10-3-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-120-AD]

RIN 2120-AA64

Airworthiness Directives; De Havilland Model DHC-8-100, -200, and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-100, -200, and -300 series airplanes. This proposal would require repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. It would also require eventual modification of all tube assemblies, which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fuel leaks and consequent increased risk of engine fires.

DATES: Comments must be received by November 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-120-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.