

Proposed Rules

Federal Register

Vol. 62, No. 243

Thursday, December 18, 1997

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 980

[Docket No. FV98-966-1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the minimum grade requirements for Florida and imported tomatoes. The grade requirements would be changed from U.S. No. 3 to U.S. No. 2. The proposed rule would 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.

DATES: Comments must be received by January 20, 1998.

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 Programs, 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 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) 720-5698. 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) 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 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). Such tomatoes also must be at least 2 3/32 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 grades, sizes, and size designations of tomatoes.

This rule would increase 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 would eliminate 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 $\frac{5}{32}$ inches to 2 $\frac{7}{32}$ inches, that the size designations of Medium, Large, and Extra Large be changed to numeric size designations of 6x7, 6x6, and 5x6, 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 proposed 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).

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. 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.

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 effect 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 proposed 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 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 grade 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.

Current import requirements specify that all lots with a minimum diameter of 2 $\frac{17}{32}$ 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 $\frac{17}{32}$ inches in diameter is required to grade at least U.S. No. 2. This proposed rule would change these requirements to reflect the size and size designation changes proposed in the October 6 and 22, 1997, issue of the **Federal Register** 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 has 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 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. Thus, this proposed rule would have small entity orientation, and would 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 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 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 increase the minimum grade requirements for tomatoes grown in the defined production area and handled under the order. This proposed rule would increase 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 proposed grade increase would 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 tomato can be unattractive and still meet the requirements of the U.S. No. 3 grade, and that this 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 1996–1997 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. 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 proposal 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 would 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 would include possible losses from tomatoes not meeting the U.S. No. 2 grade requirements. These losses also are expected to be minimal when compared to marketplace benefits expected, and the fact that tomatoes lower in quality than U.S. No. 2 could continue to be shipped within the regulated area, as defined in the marketing order, or shipped for processing.

This proposal is expected to similarly impact importers of tomatoes as far as the grade increase is concerned. That is, tomatoes lower in grade than U.S. No. 2 could be marketed outside the United States. Additionally, the marketplace price and quality benefits expected for Florida growers and handlers as a result of this proposal would also benefit exporters and importers of tomatoes. Consumers would 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 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. Small quantities of tomatoes are imported from Caribbean Basin countries. Domestic shipments for the past 10 years averaged 108,577 containers of 25,000 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 has contacted a few tomato importers concerning imports. The importers indicated that they would not have undue difficulty meeting the higher grade requirements. Also, Department fresh products inspectors at the Port of Nogales, Arizona, the port were 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 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 and more positive marketplace atmosphere resulting from providing the desired quality 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 30-day comment period is provided to allow interested persons to respond to this proposal. Florida tomato handlers began shipping tomatoes in October. Thirty days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible to cover as much of the 1997–98 shipping season as feasible. In addition, handlers need time to adjust their sorting and packing line equipment to meet the higher grade requirements. Florida tomato handlers are aware of this issue, which has been widely discussed at various industry and association meetings and was recommended by a majority of the Committee. All comments received in a timely manner will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Parts 966 and 980

Marketing agreements, Reporting and recordkeeping 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

PART 980—VEGETABLES; IMPORT REGULATIONS

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

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (a)(1) 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.

* * * * *

3. Section 980.212 is amended by revising paragraph (b)(1) 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 8/32 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: December 12, 1997.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33004 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 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 Saab Model SAAB 2000 series airplanes. This proposal would require application of sealant to the auxiliary power unit (APU) firezone bulkhead. This proposal is prompted by issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent hazardous amounts of flame, fuel, and vapor from entering the passenger compartments due to unsealed openings in the firezone bulkhead, which could result in a fire outside the APU firezone compartment.