

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for the Boise, ID, and Utah wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

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Idaho**Boise***Survey Area*

Idaho:

Ada
Boise
Canyon
Elmore
Gem

Area of Application. Survey area plus:

Idaho:

Adams
Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Fremont
Gooding
Jefferson
Jerome
Lemhi
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Power
Teton
Twin Falls
Valley
Washington

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Utah*Survey Area*

Utah:

Box Elder
Davis
Salt Lake
Tooele
Utah
Weber

Area of Application. Survey area plus:

Utah:

Beaver
Cache
Carbon
Daggett

Duchesne

Emery

Garfield

Grand

Iron

Juab

Millard

Morgan

Piute

Rich

San Juan (Only includes the Canyonlands National Park portion.)

Sanpete

Sevier

Summit

Uintah

Wasatch

Washington

Wayne

Colorado:

Mesa

Moffat

Idaho:

Franklin

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DEPARTMENT OF AGRICULTURE**7 CFR Part 980**

[Doc. No. AMS FV-08-0097; FV09-980-1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed partial exemption to the minimum grade requirements under the tomato import regulation. The Florida Tomato Committee (Committee) which locally administers the marketing order for tomatoes grown in Florida (order) recommended the change for Florida tomatoes. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. A separate rule amending the rules and regulations under the order to exempt Vintage Ripes™ tomatoes (Vintage Ripes™) from the shape requirements associated with the U.S. No. 2 grade is being issued by the Department of Agriculture (USDA). This rule would provide the same partial exemption under the import regulation so it would conform to the regulations under the order.

DATES: Comments must be received by May 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments

concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or *Internet:* <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Doris Jamieson, Marketing Specialist, or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (863) 324-3375, *Fax:* (863) 325-8793; or *E-mail:* Doris.Jamieson@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," which provides that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

USDA is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule.

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.

This proposal invites comments on a proposed partial exemption to the minimum grade requirements for Vintage Ripes™ imported into the United States. Absent an exemption, the import requirements specify that tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold into the fresh market. An interim final rule amending the rules and regulations under the order exempting Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade was issued separately by USDA (73 FR 76191, December 16, 2008). This rule would provide the same partial exemption under the import regulation so it would conform to the regulations under the order.

Section 966.52 of the order provides the authority to establish grade requirements for Florida tomatoes. Section 966.323 of the order specifies, in part, the minimum grade requirements for tomatoes grown in Florida. Section 980.212 specifies the corresponding import requirements. Form and shape represent part of the elements of grade. The current minimum grade requirement for Florida tomatoes and for imported tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855–51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two elements relate specifically to the shape of the tomato. The definitions section of the Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved. This rule would amend § 980.212 to exempt Vintage Ripes™ from these shape requirements as specified under the grade for a U.S. No. 2.

Vintage Ripes™ are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. Vintage Ripes™ are often shaped differently from other round tomatoes. Depending on the time of year and the weather, Vintage Ripes™ are

concave on the stem end with deep, ridged shoulders. They can also be very misshapen, appearing kidney shaped and lopsided. Because of this variance in shape and appearance, Vintage Ripes™ have difficulty meeting the shape requirements of the U.S. No. 2 grade.

In addition, the cost of production and handling for these tomatoes tends to be higher when compared to standard commercial varieties. The shoulders on Vintage Ripes™ are easily damaged, requiring additional care during picking and handling. These tomatoes are also more susceptible to disease. Consequently, Vintage Ripes™ require greater care in production to keep injuries and blemishes to a minimum. Still, when compared to standard commercial varieties, even with taking special precaution, larger quantities of these tomatoes are left in the field or need to be eliminated in the packinghouse to ensure a quality product. Losses can approach 50 percent or higher for Vintage Ripes™. With the higher production costs and the reduced packout, these tomatoes tend to sell at a higher price point than standard round tomatoes.

Heirloom-type tomatoes have been gaining favor with consumers. Vintage Ripes™ were bred specifically to address this demand. However, with its difficulty in meeting established shape requirements, and its increased cost of production, producing these tomatoes for market may not be financially viable without an exemption. In order to make more of these specialty tomatoes available for consumers, the Committee agreed to a change which would provide an exemption for Vintage Ripes™ from the shape requirements of the U.S. No. 2 grade. This exemption is the same as previously provided for a similar type tomato (72 FR 1919, January 17, 2007).

This rule would only provide imported Vintage Ripes™ with a partial exemption from the grade requirements under the import regulation. Consequently, Vintage Ripes™ would only be exempt from the shape requirements of the grade and would still be required to meet all other aspects of the U.S. No. 2 grade. Vintage Ripes™ would also continue to be required to meet all other requirements under the import regulation, such as size and inspection.

Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. A conforming change was also made to the import regulation. Committee members agree that increasing the grade requirement has been very beneficial to the industry

and in the marketing of tomatoes. It is important to the Committee that these benefits be maintained. There was some industry concern that providing a partial exemption for shape for an heirloom-type tomato could result in the shipment of U.S. No. 3 grade tomatoes of standard commercial varieties, contrary to the objectives of the exemption and the order.

To ensure this exemption would not result in the shipment of U.S. No. 3 grade tomatoes of other varieties, this exemption only applies to Vintage Ripes™ covered under the Agricultural Marketing Service's Identity Preservation (IP) program. The IP program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique product at every stage, from seed, production and processing, to distribution. This exemption would be contingent upon the Vintage Ripes™ maintaining positive program status under the IP program and continuing to meet program requirements. As such, this should help ensure that only Vintage Ripes™ would be shipped under this exemption.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. An interim final rule amending the rules and regulations under the order exempting Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade was issued separately by USDA (73 FR 76191, December 16, 2008). This rule would amend § 980.212 of the import requirements to bring the tomato import regulation into conformity with the changes to the order.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 200 importers of tomatoes subject to the regulation. Small agricultural service firms, which include tomato importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000 (13 CFR 121.201). Based on information from the Foreign Agricultural Service, USDA, the dollar value of imported fresh tomatoes ranged from around \$1.07 billion in 2005 to \$1.22 billion in 2007. Using these numbers, the majority of tomatoes importers may be classified as small entities.

Mexico, Canada, and the Netherlands are the major tomato producing countries exporting tomatoes to the United States. In 2007, shipments of tomatoes imported into the United States totaled 1.7 million metric tons. Mexico accounted for 949,695 metric tons, 111,697 metric tons were imported from Canada, and 5,147 metric tons arrived from the Netherlands.

This proposed rule would provide a partial exemption to the minimum grade requirements for Vintage RipesTM imported into the United States. Absent an exemption, the import requirements for tomatoes specify that tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold into the fresh market. An interim final rule amending the rules and regulations under the order to exempt Vintage RipesTM from the shape requirements associated with the U.S. No. 2 grade was issued separately by USDA (73 FR 76191, December 16, 2008). Under section 8e of the Act, imports of tomatoes have to meet the same grade, size, quality, and maturity requirements as under the order. This rule would provide the same partial exemption under the import regulation so it conforms to the changes under the order.

This action would represent a small increase in costs for producers and handlers of Vintage RipesTM primarily from costs associated with developing and maintaining an IP program. However, this rule would make additional volumes of Vintage RipesTM available for shipment. This would result in increased sales of Vintage RipesTM. Consequently, the benefits of this action would more than offset the associated costs.

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

either small or large tomatoes importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Additionally, except for applicable domestic regulations, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.o/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

This proposed rule invites comments on a partial exemption to the minimum grade requirements for imported tomatoes. A 60-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 980

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

For the reasons set forth in the preamble, 7 CFR part 980 is proposed to be amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 980.212, paragraph (b)(1) all references to “UglyRipeTM” are revised to read “UglyRipeTM and Vintage RipesTM”.

Dated: March 3, 2009.

Robert C. Keeney,

Acting Associate Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0168; Directorate Identifier 2007–SW–33–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model AB139 and AW139 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The aviation authority of Italy, with which we have a bilateral agreement, states in the MCAI that during the installation of a fire extinguisher bottle on a new helicopter, it was found that the electrical receptacle/connectors on the bottle which commands the firing of the extinguishing agent were swapped between engines No. 1 and No. 2. This condition could affect helicopters already in service and fire extinguisher bottles of the same part number in stock as spare parts. If not corrected, an improperly wired fire extinguishing bottle might cause the extinguishing agent to be discharged toward the unselected engine when the system is activated, rather than toward the engine with the fire. The proposed AD would require determining if each engine has the proper outlet end on the electrical receptacle/connector that attaches the firing cartridge to the fire extinguisher bottle, and if not, replacing the fire extinguisher bottle. The proposed AD is intended to prevent the fire extinguishing agent from not discharging toward the engine with the fire, which could result in loss of the helicopter due to an engine fire.

DATES: We must receive comments on this proposed AD by April 8, 2009.