information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 21, 2008, 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 comments on this interim final 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/AMSv1.0/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.

This rule invites comments on a modification of the handling regulation currently prescribed under the Colorado Area No. 2 potato marketing order. Any comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum size and weight requirements for most long potatoes; (2) handlers are already shipping potatoes from the 2008–2009 crop; (3) the Committee recommended this change at a public meeting and all interested parties had an opportunity to express their views and provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 948.386 by revising paragraph (a)(2) to read as follows:

§ 948.386 Handling Regulation.

* * * * *

(a) * * *

(2) *All other varieties*. U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

* * * * *

Dated: April 9, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–8685 Filed 4–15–09; 8:45 am]

BILLING CODE

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Doc. No. AMS FV–08–0090; FVO9–966–1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule providing a partial exemption to the minimum grade requirements under the marketing order for tomatoes grown in Florida (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). Absent an exemption, Florida tomatoes covered by the order must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule continues in effect the action that exempted Vintage Ripes™ tomatoes (Vintage Ripes™) from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes.

DATES: *Effective Date:* May 18, 2009.

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 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.''

USDA 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 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that added a partial exemption to the minimum grade requirements prescribed under the order. Absent an exemption, Florida tomatoes covered by the order must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule continues to exempt Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes.

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

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two 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 amends § 966.323 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 or 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 precautions, 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 exempt 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 only provides Vintage Ripes™ with a partial exemption from the grade requirements under the order. Consequently, Vintage Ripes™ are exempt from the shape requirements of the grade but are still required to meet all other aspects of the U.S. No. 2 grade. Vintage Ripes™ also continue to be required to meet all other requirements under the order, such as size, pack and container, and inspection.

Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. Committee members agree that increasing the grade requirement has been very beneficial to the industry and in the marketing of Florida tomatoes. 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 does 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 is contingent upon the Vintage Ripes™ gaining and maintaining positive program status under the IP program and continuing to meet program requirements. As such, this should help ensure that only Vintage Ripes™ are shipped under this exemption.

Therefore, this rule continues in effect the action that exempted Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ tomatoes that meets order requirements, and helps increase shipments and availability of these tomatoes.

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

Final 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 action on small entities. Accordingly, 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 the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2007–08 season was approximately $13.71 per 25-pound container, and total fresh shipments for the 2007–08 season were 45,177,457 25-pound cartons of tomatoes. Committee data indicates that around 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule continues in effect the action that provided a partial exemption to the minimum grade requirements for tomatoes grown in Florida. Absent an exemption, Florida tomatoes covered by the order must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule continues to exempt Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes. This rule amends the provisions of § 966.323. Authority for this action is provided in § 966.52 of the order.

This change represents a small increase in costs for producers and handlers of Vintage Ripes™, primarily from costs associated with developing and maintaining the IP program. However, this rule makes additional volumes of Vintage Ripes™ available for shipment. This should result in increased sales of Vintage Ripes™. Consequently, the benefits of this action are expected to more than offset the associated costs.

One alternative to this action that was considered was to not provide an exemption from shape requirements for Vintage Ripes™. However, providing the exemption increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes for consumers. Further, the same exemption had been provided previously for a similar tomato. Therefore, this alternative was rejected.

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.

This rule will not impose any additional reporting or recordkeeping requirements beyond the IP program on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, 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. Like all Committee meetings, the September 4, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 16, 2008 (73 FR 75537). Copies of the rule were mailed by the Committee's staff to all Committee members and Florida tomato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 17, 2009. No comments were received.

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/AMSv1.0/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.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (73 FR 76191, December 16, 2008) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 966—TOMATOES GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 966 which was published at 73 FR 76191 on December 16, 2008, is adopted as a final rule without change.

Dated: April 9, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–8684 Filed 4–15–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0350; Directorate Identifier 2009–SW–07–AD; Amendment 39–15885; AD 2009–07–52]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 206A Series, 206B Series, 206L Series, 407, and 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2009–07–52 and supersedes Emergency AD 2009–07–51, issued March 17, 2009, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada Limited (Bell) Model 206A series, 206B series, 206L series, 407, and 427 helicopters by individual letters. This AD requires, before further flight, inspecting each cyclic control lever assembly (lever assembly) that has less than 50 hours time-in-service (TIS) to determine if it is correctly installed and properly staked in the lever assembly. This amendment is prompted by a Transport Canada AD