

was provided to allow interested persons to respond to the proposal.

One comment was received. The commenter, representing a Canadian association of producers and handlers, fully supported the proposal to relax the size requirements.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 945**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth above, 7 CFR part 945 is amended as follows:

**PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 945.341, paragraphs (a)(2)(i) and (a)(2)(iii) are revised to read as follows:

**§ 945.341 Handling regulation.**

\* \* \* \* \*

- (a) \* \* \*
- (2) \* \* \*

(i) *Round varieties*. 1<sup>7</sup>/<sub>8</sub> inches minimum diameter, unless otherwise specified on the container in connection with the grade.

\* \* \* \* \*

(iii) *All varieties, U.S. No. 1 grade or better*. (A) Size B (1<sup>1</sup>/<sub>2</sub> to 2<sup>1</sup>/<sub>4</sub> inches diameter).

(B) Creamer (3<sup>4</sup>/<sub>4</sub> to 1<sup>5</sup>/<sub>8</sub> inches diameter).

\* \* \* \* \*

Dated: August 31, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–21354 Filed 9–3–09; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 980**

**[Doc. No. AMS FV–08–0097; FV09–980–1 FR]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule provides a 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 order’s administrative rules and regulations were recently revised to exempt Vintage Ripes™ tomatoes (Vintage Ripes™) from the shape requirements associated with the U.S. No. 2 grade. A corresponding change to the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This rule provides the same partial exemption for Vintage Ripes™ under the import regulation so it conforms to the regulations under the order.

**DATES:** *Effective Date:* October 5, 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@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.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@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final 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 final 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.

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 final rule provides a 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. A 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 (74 FR 17591, April 16, 2009). This rule provides the same partial exemption under the import regulation so it conforms 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 provides 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 only provides imported Vintage Ripes™ with a partial exemption from the grade requirements under the import regulation. Consequently, Vintage Ripes™ are only exempt from the shape requirements of the grade and 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 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 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™ 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.

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. A 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 on April 16, 2009 (74 FR 17591). This rule amends § 980.212 of the

import requirements to bring the tomato import regulation into conformity with the changes to the regulations issued under the order.

#### 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. 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 tomato 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 final rule provides a partial exemption to the minimum grade requirements for Vintage Ripes™ 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. A 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 (74 FR 17591, April 16, 2009). 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 provides the same partial exemption under the import regulation so it conforms to the changes under the order.

This action represents a small increase in costs for imports of Vintage Ripes™, primarily from costs associated with developing and maintaining an IP program. However, the costs are minimal. This results in increased sales of Vintage Ripes™. Consequently, the benefits of this action more than offset the associated costs.

This final rule will 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 final rule. Further, the public comment received concerning the proposal did not address the initial regulatory flexibility analysis.

A proposed rule concerning this action was published in the **Federal Register** on March 9, 2009 (74 FR 9969). The rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 8, 2009, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter agreed that heirloom tomatoes are gaining favor in the marketplace, and recognized that such tomatoes have difficulty meeting size and shape requirements under the order. He stated that the exemption provided in this rule should include all heirloom tomatoes.

As previously discussed, the Committee is concerned that granting broad exemptions for unspecified heirloom-type tomatoes could result in the shipment of U.S. No. 3 grade tomatoes of standard commercial varieties, weakening the integrity and the effectiveness of the order. To prevent this and ensure that only the specified varieties are shipped under the exemption granted, the exemption has been tied to continued participation

in the IP program developed by USDA. Further, this is the second exemption of this type to be issued, and other producers of heirloom-type tomatoes are free to seek similar exemptions. Therefore, this rule exempts only Vintage Ripes™, and the exemption is contingent upon maintenance of positive program status under USDA's IP program.

Accordingly, no changes will be made to the rule as proposed, based on the comment 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.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 final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### 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 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.

#### **§ 980.212 [Amended]**

■ 2. In § 980.212, paragraph (b)(1) all references to “UglyRipe™” are revised to read “UglyRipe™ and Vintage Ripes™”.

Dated: August 31, 2009.

**Rayne Pegg,**

*Administrator.*

[FR Doc. E9–21353 Filed 9–3–09; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Cooperative State Research, Education, and Extension Service**

#### **7 CFR Part 3430**

**RIN 0524–AA28**

### **Competitive and Noncompetitive Non-Formula Federal Assistance Programs—General Award Administrative Provisions and Program-Specific Administrative Provisions for the Specialty Crop Research Initiative**

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is publishing as a final rule one set of administrative requirements that contain elements common to all of the competitive and noncompetitive non-formula Federal assistance programs the Agency administers. In a relatively short period of time, this allows CSREES to apply basic rules to Federal assistance programs that had been operating without them, including new non-formula Federal assistance programs created by the enactment of the Food, Conservation, and Energy Act of 2008 (FCEA) and to efficiently implement changes to programs with existing regulations as required by FCEA. The provisions in subparts A through E serve as a single Agency resource codifying current practices simply and coherently for almost all CSREES competitive and noncompetitive non-formula Federal assistance programs except the Small Business Innovation Research (SBIR) Program and the Veterinary Medicine Loan Repayment Program (VMLRP). As specific rules are developed for each CSREES Federal assistance program, CSREES will propose adding a subpart for that Federal assistance program to this regulation. This final rule is published with a first set of program-specific Federal assistance regulations as subpart F for the Specialty Crop Research Initiative, authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998, as added by section 7311 of FCEA.

**DATES:** *Effective Date:* September 4, 2009, except that §§ 3430.56 and 3430.58(b) shall apply only to a grant or cooperative agreement awarded on or after September 4, 2009 or to a grant or cooperative agreement awarded prior to that date that receives additional funds