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August 28, 2006

Docket Clerk
Marketing Order Administration Branch
Fruit and Vegetable Programs
AMS
United States Department of Agriculture
1400 Independence Avenue, SW
Stop 0237
Washington, DC 20250-0237

**RE: Partial Exemption from Minimum Grade Requirements for
UglyRipe™ Tomatoes Grown in Florida (Docket No. FV06-966-1 PR)**

Dear Sir or Madam,

The Food Marketing Institute¹ (FMI) is pleased to respond to the Agricultural Marketing Service's (AMS's) proposed rule entitled "Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements." 71 Fed. Reg. 37014 (June 29, 2006). In particular, the Agency seeks comment on a proposed partial exemption for UglyRipe™ tomatoes to the minimum grade requirements that must be met under the existing marketing order for product that is to be shipped and sold out of state. 7 C.F.R., Part 966. In a parallel rulemaking, AMS has also requested comments on a partial exemption from the import regulations for UglyRipe™ tomatoes. 7 C.F.R., Part 980.

As discussed more fully below, FMI strongly supports the partial exemption of UglyRipe™ tomatoes from the shape standards for No. 2 grade tomatoes as required under Marketing Agreement No. 125 and Marketing Order No. 966, as well as the partial exemption from the import regulations. Accordingly, we urge AMS to finalize the proposals as written and codify the exemptions in Sections 966.323 and 980.212 of Title 7, respectively.

¹ FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion – three-quarters of all retail food sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 50 countries.

Under the current marketing order, with few exceptions, tomatoes that do not meet at least a U.S. No. 2 grade cannot be shipped or sold outside of the regulated area. Very few UglyRipe™ tomatoes – which, as their name implies, have an irregular appearance – are currently able to achieve a No. 2 grade, effectively eliminating the product from markets outside of Florida all together.

Marketing orders can play an important role in helping to guarantee that consumers are presented with a consistent, high-quality product and in building a generic reputation for quality and flavor. But in the case of the UglyRipe™ tomatoes, overly strict adherence to the marketing order's grading standards is denying consumers a distinct product that they clearly desire. Retailers have seen a demonstrated and proven demand for UglyRipe™ tomatoes, due in large part to the perception by consumers that it has a deep "homegrown" flavor. Food writer Barbara Damrosch has described the UglyRipe™ as, "ribbed and irregular but big on flavor."² Rather than repelling customers, the unusual appearance of this tomato is actually a selling point that seems to reinforce the taste experience for the consumer.

In the case of the UglyRipe™, denying shipment of the product based on its inability to meet a Grade No. 2 standard ignores the fact that the tomato's lack of a uniform size and shape does not connote a low-quality product. Consumers recognize this (as evidenced by the growing demand for the product), and so should the Florida Tomato Commission.

There are, of course, concerns that the partial exemption represents a slippery slope that could not only open the door for flooding the market with Grade 2 and 3 tomatoes but could also ultimately undermine the marketing order itself. The proposed rule explicitly addresses this by limiting the exemption to UglyRipe™ tomatoes certified under USDA's Identity Preservation Program. The limited nature of the exemption should, therefore, limit the danger of flooding the market with subpar product, while at the same time reinforcing the quality of the UglyRipe™ tomatoes that are shipped out of state.

In fact, developing new markets for the UglyRipe™ should be seen as an opportunity to expand and diversify Florida's agriculture and tomato production. Pear, cherry, greenhouse and hydroponic tomatoes all enjoy an exemption from the marketing order and have broadened demand for Florida tomatoes, rather than undermining it. Showing the same kind of flexibility with UglyRipe™ tomatoes promises not only to increase sales for farmers in the state, but to help strengthen and reinforce the larger goal of the marketing order. Conversely, continuing to remain inflexible on this issue, even in the face of strong consumer demand, could potentially undermine the marketing order and the tomato market in the long-run.

² Barbara Damrosch, "Savor the Ugly Truth," *The Washington Post*, April 7, 2005, pp. H07.

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We strongly encourage AMS to finalize the proposed rule as written in order to codify a partial exemption for UglyRipe™ tomatoes from the shape restrictions of the federal marketing order and the federal import regulations. Allowing this product to be shipped out of state year-round is ultimately good for consumers, retailers, and farmers.

Sincerely,

/S/

Deborah White
Vice President &
Associate General Counsel