

Subpart—Assessment Rates

§ 966.234 Assessment rate.

On and after August 1, 1996, an assessment rate of \$0.03 per 25-pound container is established for Florida tomatoes.

[61 FR 60512, Nov. 29, 1996]

Subpart—Handling Regulations

§ 966.323 Handling regulation.

From October 10 through June 15 of each season, except as provided in paragraphs (b) and (d) of this section, no person shall handle any lot of tomatoes produced in the production area for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section.

(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.

(2) *Size.* (i) All tomatoes packed by a registered handler shall be at least 2⁹/₃₂ inches in diameter and shall be sized with proper equipment in one or more of the following ranges of diameters. Tomatoes shipped outside the regulated area shall also be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in § 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size designation	Inches minimum diameter	Inches maximum diameter
6×7	2 ⁹ / ₃₂	2 ¹⁹ / ₃₂
6×6	2 ¹⁷ / ₃₂	2 ²⁷ / ₃₂
5×6	2 ²⁵ / ₃₂	

(ii) Tomatoes of designated sizes may not be commingled, and each container or lid shall be marked to indicate the designated size.

(iii) Only 6×7, 6×6, or 5×6, may be used to indicate the above listed size designations or containers of tomatoes.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) All tomatoes packed by a registered handler shall be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight of the contents shall not be less than the designated net weight and shall not exceed the designated net weight by more than two pounds. Section 51.1863 of the U.S. Tomato Standards shall apply to all containers.

(ii) Each container or lid shall be marked to indicate the designated net weight and must show the name and address of the registered handler (as defined in § 966.7) in letters at least one-fourth (1/4) inch high, and such containers must be packed at the registered handler's facilities.

(iii) The container in which the tomatoes are packed must be clean and bright in appearance without marks, stains, or other evidence of previous use.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Persons not certified by the committee as a registered handler shall be issued inspection certificates on shipments handled by such persons stating "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler." Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for pickling, processing, experimental purposes, relief, charity, export, or other outlets recommended by the committee and approved by the Secretary, if the handler

thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for processing are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for pickling, canning, experimental purposes, relief, charity, or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption*—(1) *For types.* The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single layer and two layer place packed tomatoes are exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, and the requirement that each container or lid shall be marked to indicate the designated net weight as specified in paragraph (a)(3)(ii) of this section, but must meet the other requirements of this section. Producer field-packed tomatoes are also exempt from the container net weight requirements specified in para-

graph (a)(3)(i) of this section, the requirement that each container or lid shall be marked to indicate the designated net weight as specified in paragraph (a)(3)(ii) of this section, and the requirement that all containers must be packed at the registered handler's facilities as specified in paragraph (a)(3)(ii) of this section, but must meet the other requirements of this section.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 50 pounds of tomatoes per day without regard to the requirements of this regulation, but this exemption shall not apply to any shipment or any portion thereof of over 50 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) of this section which are resorted, regraded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from:

(i) The tomato grade classifications of paragraph (a)(1) of this section;

(ii) The size classifications of paragraph (a)(2) of this section, except that the tomatoes shall be at least 2-9/32 inches in diameter; and

(iii) The container weight requirements of paragraph (a)(3) of this section.

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) of this section.

(e) *Report of packouts.* Each registered handler shall, at the end of each day during which handling activities have been conducted, or the following morning as the committee may prescribe, provide to the committee or its designated agent a complete and accurate accounting of the number of containers of tomatoes packed that day. The report shall include an accounting of the grade, size, maturity, and net weight of the containers packed in each such category. The total packout report shall be provided to the committee or its authorized agent in a timely fashion that

allows the committee to compile a daily, industry-wide packout report.

(f) *Assessments.* Handlers shall pay assessments as provided in §966.42. Assessment will be based on inspection certificates supplied to the committee by the Federal-State Inspection Service.

(g) *Definitions.* *Hydroponic tomatoes* means tomatoes grown in solution without soil; *greenhouse tomatoes* means tomatoes grown indoors; *specialty packed red ripe tomatoes* means tomatoes which at the time of inspection are #5 or #6 color (according to color classification requirements in the U.S. tomato standards) with their calyx ends and stems attached and cell packed in a single layer container; and *producer field-packed tomatoes* means tomatoes which at the time of inspection are #3 color or higher (according to color classification requirements in the U.S. tomato standards), that are picked and place packed in new containers in the field by a producer as defined in §966.150 and transferred to a registered handler's facilities for final preparation for market. A *Certified Tomato Repacker* is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, re-sorting, and repacking tomatoes into consumer sized packages and has been certified as such by the committee. *Processing* as used in §§966.120 and 966.323 means the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. *U.S. tomato standards* means the revised United States Standards for Fresh Tomatoes (7 CFR 51.1855 through 51.1877), effective October 1, 1991, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

[52 FR 46347, Dec. 7, 1987, as amended at 53 FR 3191, Feb. 4, 1988; 54 FR 51297, Dec. 14, 1989; 56 FR 51148, Oct. 10, 1991; 57 FR 27351, June 19, 1992; 58 FR 57719, Oct. 27, 1993; 59 FR 51091, Oct. 7, 1994; 60 FR 57907, Nov. 24, 1995; 61 FR 55731, Oct. 29, 1996; 63 FR 146, Jan. 5, 1998; 63 FR 12401, Mar. 13, 1998; 63 FR 54559, Oct. 13, 1998]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in the Finding Aids section of this volume.

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