

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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AUTHORITY: 7 U.S.C. 601-674.

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SOURCE: 30 FR 14266, Nov. 13, 1965, unless otherwise noted.

DEFINITIONS

§ 967.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 967.2 Act.

Act means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, as amended, 7 U.S.C. 601-674).

§ 967.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 967.4 Celery.

Celery means all varieties and types of celery, *apium graveolens*, grown in the production area.

§ 967.5 Production area.

Production area means all territory in the State of Florida.

§ 967.6 Producer.

Producer means any person engaged in a proprietary capacity in the production of celery.

§ 967.7 Handler.

Handler means any person (except a common or contract carrier of celery owned by another person) who handles harvested celery on behalf of a producer or on his own behalf.

§ 967.8 Handle.

Handle means to purchase harvested celery from a producer or to sell or transport harvested celery within the production area or between the production area and any point outside thereof.

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§ 967.9 Marketing year, fiscal year or season.

Marketing year, fiscal year or season means the 12 months from August 1 to the following July 31 inclusive, or such other period which the committee, with the approval of the Secretary, may establish.

§ 967.10 Committee.

Committee means the Florida Celery Committee established pursuant to § 967.25 of this part.

§ 967.11 Crate.

Crate means celery crate No. 3601 or its equivalent.

§ 967.12 Base Quantity.

Base Quantity means the number of crates of harvested celery determined by the committee pursuant to § 967.37 for a producer.

§ 967.13 Marketable Quantity.

Marketable Quantity means the total amount of celery which should be handled in a current season.

§ 967.14 Marketable Allotment.

Marketable Allotment means with respect to each producer the amount of harvested celery which may be purchased from, or handled on behalf of, such producer.

§ 967.15 Uniform percentage.

Uniform percentage means the percentage for any given season resulting from dividing the Marketable Quantity by the total Base Quantities registered by producers as provided in § 967.38.

[42 FR 32763, June 28, 1977]

§ 967.16 Grade and size.

Grade means any of the established grades of celery and *size* means any of the established sizes of celery stalks per crate as defined and set forth in the U.S. Standards for Celery (§§ 51.560 to 51.588, inclusive of this title) or U.S. Consumer Standards for Celery Stalks (§§ 51.595 to 51.613, inclusive of this title), issued by the U.S. Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the

committee and approved by the Secretary.

[33 FR 17846, Nov. 30, 1968]

§ 967.17 Farm operation.

Farm operation means the production of celery for one or more holders of a Marketable Allotment by a single farming entity under contract or other arrangement.

[33 FR 17846, Nov. 30, 1968]

§ 967.18 Flow-to-Market period.

Flow-to-Market period means any period or periods of one or more days which the committee may establish with the approval of the Secretary for the purposes of Flow-to-Market regulations.

[33 FR 17846, Nov. 30, 1968]

FLORIDA CELERY COMMITTEE

§ 967.25 Establishment and membership.

(a) There is hereby established a Florida Celery Committee consisting of 16 members, including 15 producer or handler members and one public member to administer the terms and provisions of this part. Each shall have a respective alternate who shall have the same qualifications as the member.

(b) The Secretary, upon the recommendation of the committee, may reestablish the number of producer or handler members on the committee. In recommending any such change, the committee shall give consideration to the total number of growers and handlers in the production area during the current or previous season, and other relevant factors. A change in the number of committee members can become effective at any time, provided, the effective date is more than 30 days prior to the date on which nominations are held.

[42 FR 32763, June 28, 1977, as amended at 48 FR 10806, Mar. 15, 1983]

§ 967.26 Eligibility.

Each member and alternate of the committee, except for the public member and alternate, shall be at the time of his selection and during his term of

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office, a producer or handler, or an officer or employee of a producer or handler in the group for which selected. The public member shall be neither a producer nor handler and shall have no direct financial interest in the production or marketing, except as a consumer, of agricultural products.

[42 FR 32763, June 28, 1977]

§ 967.27 Nominations.

Nominations for committee members and alternates may be made in the following manner:

(a) Growers in each group, as established in paragraph (d) or as reestablished pursuant to paragraph (g) of this section, may nominate persons for each member and alternate position in their respective group.

(b) A meeting of producers shall be held in the production area to nominate members and alternates to the committee. The incumbent committee shall hold such meeting or cause it to be held prior to July 1 of each year. Nominations thereat shall be certified to by the committee and submitted to the Secretary by July 1 of each year together with information deemed pertinent by the committee or as requested by the Secretary. If such nominations are not made in the manner specified by July 1, the Secretary may select representatives for such positions without nominations.

(c) At each such meeting, the eligibility of each producer, and each handler shall be recorded for purposes of determining participation in respective groupings.

(d) Five groups shall be established from which nominations and committee selections shall be made, as follows:

Group 1—South Florida District: Martin, Dade, Broward, Collier, Monroe, Lee, Charlotte, St. Lucie, Okeechobee, Highlands, Indian River, Glades, Hendry, and Palm Beach Counties—five (5) members and their alternates.

Group 2—Central Florida District: Orange, Seminole, Lake, Polk, Osceola, Brevard, and Volusia Counties—three (3) members and their alternates.

Group 3—West Coast-North Florida District: All the counties not embraced in Groups 1 and 2—two (2) members and their alternates.

Group 4— The producer or producers whose celery was handled by the handler who

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handled in the previous or current season, whichever is applicable, the second largest volume of celery—two (2) members and their alternates.

Group 5— The producer or producers whose celery was handled by the handler who handled in the previous or current season, whichever is applicable, the largest volume of celery—three (3) members and their alternates.

(e) Each producer is entitled to cast only one vote for each position in the group wherein he produced celery for market in the current season and possesses a Base Quantity. If a producer has so qualified in more than one group, he may elect the group in which he shall vote but he can vote for nominees in only one group. Any producer in Group 4 or Group 5 shall not be entitled to vote for nominees in other groups.

(f) The members of the committee selected by the Secretary pursuant to § 967.32 shall nominate a public member and alternate member of the committee. The committee shall recommend rules for receiving names of persons to be considered for nomination to the public member and alternate positions. Rules shall also be recommended for establishing eligibility of persons nominated to the public member and alternate positions. The persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by the July 1 of each year together with information deemed pertinent by the committee or as requested by the Secretary.

(g) The Secretary, upon recommendation of the committee, may reestablish groups and may reapportion committee membership among the various groups. In recommending such changes, the committee shall give consideration to: (1) Changes in the relative positions of existing groups with respect to celery production and shipments; (2) changes in the numbers of producers and handlers in each group; and (3) other relevant factors. A change in the establishment of groups or in apportionment of members among groups can become effective at any time, provided, the effective date is more than 30 days prior

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to the date on which nominations are held.

[30 FR 14266, Nov. 13, 1965, as amended at 33 FR 17846, Nov. 30, 1968; 42 FR 32763, June 28, 1977; 48 FR 10806, Mar. 15, 1983]

§ 967.28 Alternate members.

An alternate for a member shall act in the place of such member (a) in his absence, or (b) in the event of his death, removal, resignation, or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 967.29 Procedure.

(a) At an assembled meeting, all votes shall be cast in person, and a simple majority of committee members (including alternates acting for absent members) shall constitute a quorum. Decisions of the committee shall require the concurring vote of a majority of the members and alternates in attendance and entitled to vote.

(b) If both a member and his alternate are unable to attend a committee meeting, the committee may designate any other alternate present from the same group to serve in the place of the member.

(c) The committee may provide for meeting by telephone, telegraph, or any other means of communication. All votes shall be recorded in the minutes of each meeting so as to reflect how each member or alternate voted.

[30 FR 14266, Nov. 13, 1965, as amended at 48 FR 10806, Mar. 15, 1983]

§ 967.30 Powers.

The committee shall have the following powers:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part;

(d) To recommend to the Secretary amendments to this subpart.

§ 967.31 Duties.

The committees shall have, among others, the following duties:

(a) To select from among its members and alternates such officers and subcommittees, and to adopt such rules or bylaws for the conduct of its business as it deems necessary;

(b) To employ necessary personnel, including professional and technical services, fix their compensation and terms of employment;

(c) To keep minutes, books and records which will reflect all the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(d) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the offices of the committee;

(e) To cause the books of the committee to be audited by a certified public accountant at least once each marketing year and at such other times as the committee may deem necessary, or as the Secretary may request; to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(f) To act as intermediary between the Secretary and any producer or handler;

(g) To investigate and assemble data on the growing, handling, and marketing conditions with respect to celery;

(h) To submit to the Secretary such available information as he may request or the committee may deem desirable and pertinent;

(i) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations and of all regulatory actions taken affecting producers and handlers;

(j) To give the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members;

(k) To investigate compliance and use means available to prevent violations of the provisions of this part; and

(l) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection

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with all proper committee activities and objectives under this part.

(m) To secure suitable candidates for the public member and alternate positions, and to nominate persons for such positions on the committee.

[30 FR 14266, Nov. 13, 1965, as amended at 42 FR 32763, June 28, 1977]

§ 967.32 Selection and term of office.

(a) *Selection.* The committee shall be selected by the Secretary from nominees submitted by the committee, or from among other eligible persons. Each person so selected shall qualify by filing a written acceptance with the Secretary prior to assuming the duties of the position.

(b) *Term of office.* The term of office of each committee member and alternate shall be for a period of one year beginning August 1 and ending the following July 31. Committee members and alternates shall serve for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 967.33 Vacancy.

Any vacancy occasioned by the death, removal, resignation, or disqualification of any committee member or alternate shall be recognized by the committee by certifying to the Secretary a successor for the unexpired term unless a selection is deemed unnecessary by the Secretary.

§ 967.34 Expenses.

Members and alternates of the committee shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in attending committee and subcommittee meetings and in the performance of their duties under this part.

VOLUME LIMITATIONS

§ 967.35 Marketing policy.

(a) The committee shall meet, consider and adopt a marketing policy for each season. Committee considerations shall include probable celery production within the production area and in competing areas, the grade, size, quality, and quantity of celery which

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should be made available to market during such season to meet market requirements and establish orderly marketing conditions, and other pertinent information. On the basis of these considerations the committee shall adopt a marketing policy for such season as follows:

(1) *Annual Marketable Quantity*—A meeting to adopt a policy regarding the annual Marketable Quantity of celery to be marketed shall be held not later than June 15 of each year. Prior to November 1 of each year, the committee shall review such marketing policy and as changes are indicated, the committee may adopt appropriate revision.

(2) *Other regulations*—Prior to or at the same time initial recommendations in any season are made pursuant to § 967.40(a) the committee shall prepare a marketing policy statement concerning the necessity for such regulations.

(b) Notice of and recommendations from, the initial marketing policy for a marketing season or any later changes shall be submitted promptly to the Secretary and notice of such marketing policy shall be given to handlers, producers and other interested parties by bulletins or other appropriate media.

[33 FR 17846, Nov. 30, 1968]

§ 967.36 Marketable Quantity.

(a) Whenever the committee recommends and the Secretary finds on the basis of such recommendations or other information, that limiting the total quantity of celery to be handled during a marketing season, or revising a Marketable Quantity previously established, would tend to effectuate the declared policy of the act, he shall establish the Marketable Quantity which handlers may handle as first handlers for such season, or revise a previously established Marketable Quantity.

(b) When a Marketable Quantity is established for any season, no handler may handle any harvested celery during such season unless (1) it is within the Marketable Allotment of a producer who has a Base Quantity pursuant to § 967.38, and (2) such producer authorized the first handler thereof to purchase or otherwise handle it.

§ 967.37 Base Quantities.

(a)(1) Base Quantities for producers with a history of production and order participation for the period 1965-66 through 1976-77 shall be Base Quantities in effect for the 1976-77 season, as recorded by the Florida Celery Committee on December 15, 1976, subject to modifications relating to current production and marketing experience specified in (b) through (e) of this section, or to transfers pursuant to § 967.39.

(2) Base Quantities for other producers shall be established pursuant to Base Quantity reserve as specified in paragraph (d) of this section, subject to modifications relating to current production and marketing experience specified in (b) through (e) of this section, or to transfer pursuant to § 967.39.

(b) Periodically, but at least once each five years, the committee shall review Base Quantities and recommend any changed in the formula, to be prescribed by the Secretary, for determining Base Quantities which may be deemed appropriate.

(c) The committee may recommend rules pertaining to producers who wish to obtain, hold, or transfer Base Quantities or Marketable Allotments. Such rules shall be subject to approval of the Secretary and may require producers to file reports and information with respect thereto, including but not limited to quantities marketed in the representative period, their qualifications as producers, as well as particulars on sale and handling of celery as a result of any Base Quantities or Marketable Allotments that may be issued to them.

(d)(1) Beginning with the 1978-79 season, a reserve in the amount of six percent of the total Base Quantities shall be established annually. Such reserve shall be used for the issuance of Base Quantities to new producers and adjustments in Base Quantities for producers with existing Base Quantities, with 50 percent being made available for new producers and 50 percent available for adjustments for producers with existing Base Quantities.

(2) Base Quantities issued to new producers shall be permanent, subject to requirements of § 967.37(e). Base Quantities issued to new producers shall not

be transferable within three years after issuance. Any adjustments in Base Quantities issued to producers with existing Base Quantities shall be effective for one season only and a new request by such producers for adjustment in Base Quantity shall be submitted each season.

(3) The committee may recommend rules for establishing such reserve and for procedures whereby persons may apply for Base Quantities thereunder. Such rules shall be subject to approval by the Secretary. Rules may provide for open informal hearings by the committee on applicants' requests and may establish guides or standards for equitable and thorough consideration of pertinent factors relating to each case, including but not limited to past production of celery by applicant, acreage planted, average yields, the production capacity of the farm or land the applicant expects to use, land, labor, and equipment available to applicant for celery production, economic and marketing factors, and other factors deemed pertinent.

(4) Each person filing an application hereunder for a new Base Quantity or adjustment in an established Base Quantity shall be notified by the committee of its determination thereon. Such determination and considerations appertaining thereto shall be subject to review by the Secretary. If a Base Quantity is issued to an applicant hereunder, the requirements of § 967.38(c) shall then apply.

(e) A condition for the continuing validity of a Base Quantity is production of celery thereunder. If no bona fide effort is made to produce and sell celery thereunder for two consecutive seasons commencing with the 1977-78 season, the Base Quantity may be declared invalid due to lack of use and cancelled at the end of the second season of non-production. The committee shall determine criteria, subject to approval by the Secretary, as to whether a bona fide effort has been made to produce and sell celery, including one requirement that the producer must have sold at least 50 percent of each of his seasonal Marketable Allotments, unless prevented from doing so by acts of God or other circumstances beyond his control.

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(f) Annual registration of Base Quantity holders will be required no later than May 1 or such other date as may be approved pursuant to regulations. For the 1977-78 season Base Quantity holders shall register within 30 days following the effective date of this part but no later than July 31, 1977. Any Base Quantity holder who does not register or who has not made firm and substantial commitments to produce celery for the forthcoming season shall have his Base Quantity eliminated from the calculations in determining the Uniform Percentage. However, such procedure will not cause the Base Quantity holder to lose his Base Quantity.

[30 FR 14266, Nov. 13, 1965, as amended at 42 FR 32763, June 28, 1977]

§ 967.38 Marketable Allotments.

(a) When the Secretary establishes a season's Marketable Quantity, a percentage shall be determined by dividing the amount fixed as the season's Marketable Quantity by the total Base Quantities of producers who have registered with the committee pursuant to § 967.37(f).

(b) The Marketable Allotment for each producer shall be established by the committee by multiplying his Base Quantity by the appropriate Uniform Percentage. The resulting amount shall be his Marketable Allotment for a season. The committee shall notify each producer of his allotment.

(c) After a producer has been notified of his Marketable Allotment, he shall, in turn, notify the committee, on forms furnished by it, the handler or handlers who will first handle all or a portion of his Marketable Allotment for the ensuing season, as well as the number of crates each such handler will so handle. This information shall be sent by the committee to the respective handlers.

(d) If the committee recommends and the Secretary approves, that no season's Marketable Quantity be established, the Marketable Allotment of each producer shall be unlimited.

(e) When the Marketable Quantity is equal to or smaller than total Base Quantities, the first 37,500 crates of each producer's Base Quantity shall be subtracted from both the Marketable

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Quantity and total Base Quantities when the Uniform Percentage is calculated in this section (§ 967.38(a)), and the Uniform Percentage for the first 37,500 crates will be 100 percent. In the event the Marketable Quantity exceeds total Base Quantities, there shall be no exemption for the first 37,500 crates and the Uniform Percentage shall be applied to each producer's total Base Quantity.

(f) Marketable allotments shall be issued only to producers who have registered by May 1, or such other date prescribed by the Secretary, and indicated firm and substantial commitments for the production of celery for the forthcoming season.

[30 FR 14266, Nov. 13, 1965, as amended at 42 FR 32764, June 28, 1977]

§ 967.39 Transfers.

(a) Producers' Base Quantities or Marketable Allotments, or both, may be transferred upon appropriate requests therefor, pursuant to § 967.37 and upon approval of the committee.

(b) Any producer with a Base Quantity may request a transfer of all or a portion of his Base Quantity for a specified period of time.

(c) Any producer with a Marketable Allotment may request a transfer of all or a portion of his Marketable Allotment during a current season.

(d) Producers must advise the committee, prior to final approval of a transfer, that a different amount will be handled by a handler or handlers due to any transfer authorized in paragraph (c) of this section. The committee, upon receipt of such notification, shall advise the handler or handlers involved of the adjustments in the amount they may handle as first handlers thereof for the current season, based upon the number of crates involved in the transfer, as well as issue revised Marketable Allotments to the producers involved.

OTHER REGULATIONS

§ 967.40 Issuance of other regulations.

(a) The Secretary may limit the handling of celery whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such

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regulations would tend to effectuate the declared policy of the act.

(b) Such regulations may:

(1) Establish specific Flow-to-Market periods and limit the total quantity of celery which may be handled therein;

(i) The committee may recommend and the Secretary may issue such rules as are necessary to effectuate the Flow-to-Market procedures and regulations.

(ii) The committee may recommend to the Secretary and the Secretary may limit in conformity with paragraph (a) of this section the total quantity of celery which is deemed advisable to be handled during any specified Flow-to-Market period or periods.

(iii) In making its recommendations, the committee shall give due consideration to the following factors:

(a) Market prices for celery; (b) supply of celery on hand at shipping point, on track at, and en route to, the principal markets; (c) supply, maturity, and condition of celery in the production area; (d) market prices and supplies of celery from competitive producing areas, and supplies of other competitive vegetables; (e) trend and level in consumer income; and (f) other relevant factors as specified by the committee in its recommendation.

(iv) At any time during a Flow-to-Market period for which the Secretary has fixed the quantity of celery which may be handled, the committee may recommend to the Secretary that such quantity be increased for such period. Each such recommendation, together with the committee's reason for such recommendation, shall be submitted promptly to the Secretary.

(v) Whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of celery which may be handled during a specified Flow-to-Market period will tend to effectuate the declared policy of the Act, he shall fix such quantity. The quantity so fixed for any such period may be increased by the Secretary at any time during such period. The Secretary may upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation at any time.

(vi)(a) At the times specified by the committee, each handler of celery shall submit to the committee, on forms to be supplied by the committee, a report setting forth the number of crates each producer or farm operation will make available to him for handling during the applicable period; and in the case of a farm operation, shall specify the number of total crates available which are to be attributed to each holder of a Marketable Allotment who is involved in the farm operation so that each holder of a Marketable Allotment is treated as an individual producer for the purposes of the Flow-to-Market regulation.

(b) Such written request and report shall be submitted at such time and in such manner and contain such other information as the committee may recommend and the Secretary approve.

(c) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(vii)(a) Whenever the Secretary has fixed the total quantity of celery that may be handled during a regulated Flow-to-Market period, the committee shall compute under a uniform rule, for each producer entitled thereto, the quantity of celery which may be handled for or purchased from him by handlers during such period. The amount to be handled under these regulations will be in addition to that quantity of harvested celery a handler has on hand at the commencement of the specified Flow-to-Market period, as reflected in required reports approved for committee use by the Secretary.

(b) The percentage obtained by dividing the quantity of crates set by the Secretary for such Flow-to-Market period by the total crates stated to be available by all handlers for such period shall be applied uniformly to the amount available for handling for each producer to determine the maximum number of crates that may be handled

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by or for him during that period: *Provided*, That it is within his unused Marketable Allotment pursuant to §967.38: *And provided further*, That until more than 37,500 crates of his production has been handled on his behalf during the current season, the handler thereof shall not have the number of crates he handles for or sells on behalf of such producer reduced by the Flow-to-Market regulation; however such handler shall be limited to 100 percent of that which was stated to be marketable in such Flow-to-Market period for that producer.

(c) For the purpose of determining compliance with Flow-to-Market limitations, a tolerance of 1 percent of an allotment holder's allowed Flow-to-Market quantity for such period or 200 crates, whichever is less, is permitted.

(viii) Verification of compliance with allotments: During any season or Flow-to-Market period for which allotment regulations are in effect, all acreage of celery included in applications for allotments shall be subject to field checking by the committee to determine compliance with allotments. Checking procedures, methods for establishing committee determinations, means for notifying handlers and other persons of the extent to which allotments have been used shall be in accordance with rules recommended by the committee and approved by the Secretary.

(2) Establish total holidays by limiting the handling of harvested celery during a specified period or periods. The amount to be handled under these regulations will be that quantity of harvested celery a handler has on hand at the commencement of the holiday, as reflected in required reports approved for committee use by the Secretary;

(3) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities, containers, or packs or any combination thereof, of celery during any period; also, limit the handling of particular grades, sizes, or qualities, or celery differently, for different varieties, for different portions of the production area, for different markets, for different sizes and types of containers, or for

any combination of the foregoing, during any period;

(4) Limit the handling of celery when parity prices have been reached by establishing and maintaining minimum standards of quality and maturity in terms of grades or sizes;

(5) Require uniform inspection, grading and certification of celery and proper labeling of containers for celery to show the grade or size, or both, thereof;

(6) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be handled.

(c) Regulations issued hereunder may be amended, modified, suspended, or terminated by the Secretary whenever it is determined:

(1) That such action is warranted upon recommendation of the committee or on the basis of other available information;

(2) That such action is essential to provide relief from inspection, or regulations under paragraph (b) of this section, for minimum quantities less than customary commercial transactions as recommended by the committee and approved by the Secretary; or

(3) That regulations issued hereunder no longer tend to effectuate the declared policy of the Act.

[33 FR 17847, Nov. 30, 1968]

§ 967.41 Handling for special purposes.

Regulations in effect pursuant to §967.38 or §967.40 may be modified, suspended, or terminated to facilitate handling of celery for:

(a) Exports;

(b) Relief or charity;

(c) Experimental purposes; and

(d) Other purposes which may be recommended by the committee and approved by the Secretary.

[33 FR 17847, Nov. 30, 1968]

§ 967.42 Safeguards.

The committee, with the approval of the Secretary, may establish through rules such requirements as may be necessary to insure that shipments made pursuant to §967.41 were handled and used for the purpose stated.

[33 FR 17847, Nov. 30, 1968]

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INSPECTION

§ 967.43 Inspection and certification.

(a) Whenever the handling of celery is regulated pursuant to § 967.40(b)(3) through (5), or at other times when recommended by the committee and approved by the Secretary, no handler shall handle celery unless such celery is inspected by an authorized representative of the Federal or Federal-State Inspection Service and is covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 967.40(c) or paragraph (b) of this section.

(b) Regrading, resorting, or repacking any lot of celery shall invalidate any prior inspection certificate insofar as the requirements of this section are concerned. No handler shall handle celery after it has been regraded, resorted, repacked or in any way additionally prepared for market, unless such celery is inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, or repacked celery may be modified, suspended, or terminated upon recommendation by the committee, and approval of the Secretary.

(c) Upon recommendation of the committee and approval by the Secretary, any or all celery so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When celery is inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of celery by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon,

or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated by the committee.

[33 FR 17847, Nov. 30, 1968]

MARKETING RESEARCH AND DEVELOPMENT

§ 967.44 Research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of celery. The expenses of such projects shall be paid by funds collected pursuant to § 967.61 or § 967.63. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any paid advertising or major program. Also, for each advertising or major program the contracting party shall be required to maintain records of money received and expenditures and such shall be available to the committee and the Secretary. The committee shall, with the approval of the Secretary, establish criteria which will serve as a guide for it to determine what constitutes a major program.

[33 FR 17847, Nov. 30, 1968, as amended at 42 FR 32764, June 28, 1977]

EXPENSES AND ASSESSMENTS

§ 967.60 Expenses.

The committee may incur such expenses as the Secretary finds reasonable and likely to be incurred by it during each fiscal year for its maintenance and functioning, and for such other purposes as the Secretary determines appropriate under this part. To assist the Secretary, the committee shall submit a budget of expenses and prospective revenue to him for each

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season, with explanations therefor, and recommendations as to the rate of assessment for such fiscal year.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17846, Nov. 30, 1968]

§ 967.61 Assessment and requirements for payment.

Each first handler shall pay to the committee upon demand, his pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per unit fixed by the Secretary times the total assessable units of celery which he handles. At any time during or after a marketing year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. The payment of expenses and assessments for the maintenance and functioning of the committee may be required during periods when no regulations are in effect.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17846, Nov. 30, 1968]

§ 967.62 Accounting.

At the end of a fiscal year, funds in excess of such year's expenses may be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for expenses authorized pursuant to § 967.40. Funds in excess of those necessary to pay expenses and those placed in the operating reserve shall be refunded pro rata to handlers from whom such funds were collected.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17846, Nov. 30, 1968]

§ 967.63 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 967.44. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

[42 FR 32764, June 28, 1977]

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REPORTS AND RECORDS

§ 967.70 Reports.

Upon request of the committee, with the approval of the Secretary, each producer and handler shall furnish to the committee such reports and information as may be necessary to enable it to exercise its powers and perform its duties under this part. Such reports may include, but are not necessarily limited to the following:

(a) Reports by any or all handlers on the number of crates of harvested celery purchased from or handled on behalf of any or all producers during any prior or current season;

(b) Reports by any or all producers on the number of crates of harvested celery sold by such producers during any prior or current season or the current quantities available for sale by such producers;

(c) Reports by any or all producers on the number of crates of harvested celery sold to or through any or all handlers during any prior or current period.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.71 Records.

Each producer and handler shall maintain and make available upon request, such records pertaining to celery handled by him as will substantiate the reports required by the committee. All such records shall be maintained for not less than one year after the termination of the marketing season to which such records relate.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.72 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports of producers and handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where celery is handled, and at any time during reasonable business hours shall be permitted to inspect such producer and handler premises and any and all records of such

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persons with respect to matters within the purview of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.73 Confidential information.

All reports, data, or information obtained by the committee constituting a trade secret or disclosing the trade position, financial condition, or business operations of particular producers or handlers shall be kept in the custody and under the control of one or more committee employees and shall be treated as confidential. Compilations of general reports from data submitted by producers or handlers are authorized, subject to prohibition of disclosure of individual producers' or handlers' identities or operations.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

MISCELLANEOUS PROVISIONS

§ 967.80 Compliance.

No person may handle celery except in conformity with the provisions of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.81 Right of the Secretary.

The members and alternates of the committee and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.82 Derogation.

Nothing in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary, or of the United States (a) To exercise any powers granted by the act or otherwise, or (b) in accordance with

such powers, to act in the premises whenever such action is deemed advisable.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.83 Agents.

The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.84 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 967.55.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.85 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate the provisions of this part at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production of celery for market; provided, that such majority have, during such period produced for market more than 50 percent of the volume of such celery produced for market, but such termination shall be effective only if announced on or before August 1 of the then current fiscal year.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

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§ 967.86 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the same committee, of all the funds and property then in possession of, or under control of such committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees (1) shall continue in such capacity until discharged by the Secretary; (2) shall, from time to time, account for all receipts and disbursements, or deliver all property on hand, together with all books and records of the committee and of the joint trustees, to such person as the Secretary may direct; and (3) shall, upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee, or the joint trustees pursuant to this part.

(c) Any funds collected pursuant to § 967.41 over and above the amounts necessary to meet outstanding obligations and expenses necessarily incurred during the operation of this part and during the liquidation period, shall be returned to handlers as soon as practicable after the termination of this part. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

(d) Any person to whom funds or claims have been transferred or delivered by the committee, or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon the said joint trustees.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.87 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right,

duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.88 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler, or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission as such member, alternate, employee, or agent except for acts of dishonesty.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.89 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

Subpart—Rules and Regulations

SOURCE: 30 FR 15416, Dec. 15, 1965, unless otherwise noted.

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GENERAL

§ 967.100 Communications.

Unless otherwise provided in the marketing agreement and order, or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed to the Florida Celery Committee, 4401 East Colonial Drive, Post Office Box 20067, at Orlando, Fla.

DEFINITIONS

§ 967.110 Order.

Order means Order No. 967 (§§ 967.1–967.60) regulating the handling of celery grown in Florida.

§ 967.111 Marketing Agreement.

Marketing Agreement means Marketing Agreement No. 149.

§ 967.112 Terms.

Except as otherwise provided herein, terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

INTERPRETATIVE RULES

§ 967.130 Producer.

(a) *Producer* shall be deemed to include any person: (1) Who or which owns and farms land resulting in his or its ownership of the celery produced thereon; (2) who or which rents and farms land, resulting in his or its ownership of all or a portion of the celery produced thereon; or (3) who or which owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of the celery produced thereon; or (4) who or which has celery produced on his or its behalf which results in his or its ownership of the celery so produced.

(b) The term *producer* is defined in § 967.6 as being any person engaged in a proprietary capacity in the production of celery (as defined in § 967.4). The term *person* is construed to mean the business unit which produces celery for market. The term *producer* shall be limited to those who have an ownership in celery produced in the production area.

(c) The term *partnership* shall be deemed to include a husband and wife with respect to land, the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or tenants by entirety, or, under community property laws, as community property. The term “partnership” shall also be deemed to include two or more persons which join together by agreement, informal or otherwise, for the purpose of producing celery and which, as a unit, has ownership of such celery. The term “partnership” shall also include so-called “joint ventures,” wherein one or more parties to the arrangement contribute capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production of celery for market and ownership thereof by such joint venture.

[30 FR 15416, Dec. 15, 1965, as amended at 43 FR 15609, Apr. 14, 1978]

§ 967.135 Reestablishment of committee.

Pursuant to § 967.25(b), the Florida Celery Committee is reestablished to consist of 12 members, including eleven producer or handler members and one public member.

[48 FR 21532, May 13, 1983]

§ 967.136 Reapportionment of committee membership.

Pursuant to § 967.27(g), industry membership on the Florida Celery Committee shall be reapportioned among groups as follows:

(a) Group 1—Two members and their alternates.

(b) Group 2—Two members and their alternates.

(c) Group 3—Two members and their alternates.

(d) Group 4—Two members and their alternates.

(e) Group 5—Three members and their alternates.

[48 FR 21532, May 13, 1983]

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PUBLIC MEMBERS

§ 967.140 Eligibility requirements.

(a) Public members shall be neither producers nor handlers of celery and shall have no direct financial interest in the production or marketing of celery except as consumers of agricultural products.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of Florida.

(d) Public members shall be nominated by the Florida Celery Committee and shall serve a one-year term which coincides with the term of office of producer or handler members of the committee.

[42 FR 46045, Sept. 14, 1977]

§ 967.141 Nomination procedures.

(a) Names of candidates together with evidence of qualification for public membership on the Florida Celery Committee shall be submitted to the Committee at its business office, 4401 East Colonial Drive, or P.O. Box 140067, Orlando, Fla. 32814, no later than April 15.

(b) Questionnaires may be sent by the committee to those persons submitted as candidates, to determine their eligibility and interest in becoming a public member.

(c) The names of persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by July 1 with such information as deemed pertinent by the committee or as requested by the Secretary.

(d) Nomination of the initial public member may be made later than July 1 but as soon as practical thereafter. Such member's term shall end July 31, 1978.

[42 FR 46045, Sept. 14, 1977, as amended at 54 FR 35317, Aug. 25, 1989]

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ADMINISTRATIVE RULES

§ 967.150 Marketable Allotment.

(a) Producers holding Base Quantities shall register with the committee no later than May 1 of each year, on committee forms, to indicate their intentions and commitments to produce and market celery during the forthcoming season.

(b) As provided in § 967.38(f), Marketable Allotments shall be issued only to producers who have registered by May 1.

(c) Pursuant to § 967.36(b) no handler may handle any harvested celery when a Marketable Quantity is in effect, unless it is within the Marketable Allotment of a producer who has a Base Quantity pursuant to § 967.37 and such producer authorized the first handler thereof to purchase or otherwise handle it. By October 1 of each season, each producer shall notify the committee, by certification to it on committee forms, the number of crates of harvested celery to be handled by each such handler; and if there are subsequent changes in arrangements, the committee shall similarly be notified.

[43 FR 15609, Apr. 14, 1978]

§ 967.151 Base Quantities.

(a) Pursuant to § 967.37(d)(1) a reserve of Base Quantities shall be established annually beginning with the 1978-79 season. Each annual reserve shall amount to 6 percent of the total of Base Quantities in effect for the previous season.

(1) Applicants for Base Quantities must apply to the committee for a portion of the reserve not later than April 15 each year on such forms as may be prescribed by the committee. Such forms may include, but not necessarily be limited to, details on:

(i) Individual or firm name and address.

(ii) Location and size of farming operation.

(iii) Evidence of any firm and substantial arrangements or commitments, such as contractual arrangements with credit agencies, handlers,

fertilizer dealers, management agencies and others for the production and marketing of celery, including reference to land, equipment, occupation, crops produced, and past experience in farming. Applicants for increases in Base Quantity also should provide substantial evidence of a capability to produce and market additional celery including specific references to celery sales relative to Marketable Allotments, production facilities and marketing facilities.

(b) Upon receipt of the completed application forms the committee shall consider and make determinations of the allocation of annual reserve Base Quantities among eligible applicants. Up to 50 percent of the total reserve shall be allocated among new producers. Such producers shall be those applicants who have no Base Quantity under the order, and any reserve Base Quantity distributed to such applicants shall be for the purpose of establishing new production and marketing of celery. Up to 50 percent of the total reserve shall be allocated among producer applicants with existing bases. In the event total applications in either category (new producers or producers with existing bases) exceed the amount of reserve Base Quantity authorized, the reserve in each category shall be apportioned among eligible applicants on a uniform basis. Any balance of the reserve which has not been allocated during a season shall not carry forward into the following season.

(c) As provided in §967.37, the committee may provide for informal review in open meeting of the committee, or subcommittee thereof, of applicants' request for increases in Base Quantities or for Base Quantities. Such meeting shall be so conducted that an accurate record shall be made of relevant evidence presented. The record of such informal review, with references to relevant data and information presented, shall be retained by the committee and shall be subject to review by the Secretary.

(d) Each completed application form submitted to the committee shall be considered and determinations shall be made thereon. The committee shall notify each individual in writing of the action taken on the applications sub-

mitted. If the committee has not advised an individual of its decision by July 15, the individual may appeal to the Secretary for appropriate consideration thereof.

(e) To administer this part in accordance with its terms and provisions, a record of each Base Quantity and each Marketable Allotment shall be maintained by the committee.

(1) Whenever any Base Quantity or any Marketable Allotment is established for a producer, the committee shall so record and advise such producer on forms designated by it.

(2) No producer may transfer any Base Quantity or Marketable Allotment or obtain the same without first submitting a report containing all the details of the proposed transfer to the committee for record keeping and verification. Such reports shall be on forms prescribed by the committee and shall include, but not necessarily be limited to, and as applicable, Base Quantity or Marketable Allotment held, number of crates to be transferred and the specific period of time the transfer will be in effect, name and address of the producer to whom such Base Quantity or Marketable Allotment is being transferred, number of crates marketed in the representative period, qualifications as a producer and particulars on the sale and handling of the celery referable to the transferred Base Quantity or Marketable Allotment. The committee will only give consideration to requests for transfers of Base Quantity prior to the time the Marketable Quantity is recommended to the Secretary for a particular season, after which time requests for transfers of Marketable Allotments may be made to, and considered by the committee; *Provided*, That, (i) pursuant to §967.36(b), transfers of Marketable Allotment may only be made to holders of Base Quantity; and (ii) requests for transfers of Base Quantities for any future season may be made at any time, except, pursuant to §967.37, no Base Quantity or portion thereof issued to a new producer may be transferred within 3 years of the date of issuance.

(3) No handler may purchase harvested celery from, or handle harvested celery on behalf of, any producer, under a Base Quantity or Marketable

Allotment transferred from one producer to another producer, unless such transfer was approved by the committee and recorded by it, or appropriate subcommittee, and the transferee has been so notified by the committee.

(4) No transfer of all or a portion of a Base Quantity that was originally issued by the committee to a producer in an amount greater than 37,500 crates shall (i) cause the elimination of such Base Quantity from the Marketable Quantity or from the total Base Quantities when the Uniform Percentage is calculated pursuant to §967.38(a), nor (ii) change the applicability of such Uniform Percentage in establishing the Marketable Allotment with respect to the portion of his Base Quantity that was not transferred, regardless of whether or not such remainder exceeds 37,500 crates. The same Uniform Percentage shall also be applicable to the transferee-producer with respect to all or the portion of the transferred Base Quantity, regardless of whether or not the transferred Base Quantity or portion thereof is 37,500 crates or less, or, when added to the Base Quantity originally issued to such transferee-producer, does not aggregate more than 37,500 crates.

(f) Base Quantities not used for two consecutive seasons shall be declared invalid and cancelled if no bona fide effort is made to produce and sell celery thereunder. In determining what constitutes a "bona fide effort," the committee should require evidence of:

(1) Commitment of all resources necessary for the production and marketing of a celery crop.

(2) Registration with the committee annually, pursuant to §967.37(f), to indicate intentions and commitments to produce and market celery.

(3) Production and sale of at least 50 percent of the producer's seasonal allotment of celery in which he has a proprietary interest, unless prevented from doing so by acts of God or other circumstances beyond his control.

[43 FR 15609, Apr. 14, 1978]

§967.152 Reserve for Base Quantities.

(a) Each season for which it recommends establishment of a Marketable Quantity under the provisions of

§967.36, the committee shall consider the need for a reserve for Base Quantities. Such consideration shall be directed to factors related to reserve needs, such as, but not necessarily limited to, the equitable apportionment of Base Quantities of celery among producers; and the need to meet additional demand for celery.

(b) The committee shall recommend to the Secretary, with its considerations and judgments thereon, the amount, if any, of harvested celery, in terms of crates, which should be established in a reserve for Base Quantities for the ensuing season. Such reserve may be calculated as a percentage of the total Marketable Quantity for a season or the then current Base Quantities, or shipments for a previous season or the average of shipments for two or more seasons, or on other similar basis to be determined by the committee with the Secretary's approval.

(c) The reserve, if any, for a particular season shall, for any season after the initial season, be established by the Secretary, pursuant to the committee recommendations or other available information, no later than the date of the establishment of Marketable Quantity.

(d) Applicants for Base Quantities or increases of Base Quantities, who have registered under §967.151(a), may apply to the committee for a portion of such reserve within such time and on forms prescribed by it. The committee shall consider each application in accordance with §967.151(b) and the amount of celery needed to meet the Marketable Quantity or revised Marketable Quantity for the season, the historical supply available, and the decline or increase in volume of celery production by other producers; and, if approved thereunder, determine the Base Quantity for each such applicant.

(e) Any balance of the reserve which has not been distributed during a current season shall not carry forward into the following season.

§967.155 Revised Base Quantity formula.

As soon as practicable following the May 1, 1979, registration deadline, Base Quantities for all producers of record with the Florida Celery Committee as of December 15, 1976, shall be revised to

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be effective for the 1979–80 season as follows and in the order enumerated:

(a) Application of the provisions of §§ 967.37(e) and 967.39 as it pertains to permanent transfers.

(b) Selection of the highest number of crates of celery produced and shipped by or for each producer during any one of the five seasons, 1974–75 through 1978–79, or his Base Quantity for the 1978–79 season, whichever is greater: *Provided however*, no producer who produced and shipped celery during each of the five seasons, 1974–75 through 1978–79, shall lose all or any portion of his Base Quantity by the application of § 967.39 pertaining to specified period of time transfers, which were approved by the committee prior to the commencement of the 1974–75 season: *And provided further*, any new producer who is issued a Base Quantity by the committee under § 967.37(d) or by transfer after December 15, 1976, shall retain his present Base Quantity.

(c) Any producer who transferred, with approval of the committee, all or a portion of his Base Quantity for a specified period of time prior to the commencement of the 1974–75 season shall have the transferred Base Quantity reissued to him upon the expiration date of such transfer.

[43 FR 57240, Dec. 7, 1978]

REPORTS AND RECORDS

§ 967.165 Reports.

(a) Pursuant to § 967.45, the following reports shall be furnished by each handler to the committee at such time and on such forms as it may request:

(1) A report of daily celery handlings broken down by number of crates, sizes, and each producer thereof.

(2) A weekly report of assessments due the committee.

(b) Pursuant to § 967.37(c), the following reports shall be furnished by producers as a condition for obtaining, holding, or transferring Base Quantities or Marketable Allotments:

(1) A weekly celery report showing acreage planted and harvested, and the number of crates harvested each day.

(2) A weekly report by each producer who marketed celery verifying the number of crates marketed and the bal-

ance of such producer's Marketable Allotment.

(3) Anticipated planting and harvesting schedule by each producer for the ensuing season, including total acres to be planted, beginning and ending dates of planting and harvesting, total production, for whom grown, and handler or handlers thereof.

(4) A report by each producer of production when done under contract giving such information as location, total acres to be planted, beginning and ending dates of planting and harvesting, handler, breakdown of proprietary interest by blocks and percent of ownership of other producers who have an interest.

(5) Pursuant to § 967.37, the committee shall be notified within a reasonable length of time by the executor, attorney, or receiver as applicable, following the death of a producer, or upon dissolution of any partnership, corporation or company which is a producer, who or which is a holder of a Base Quantity, of (i) the current status of the Base Quantity, and (ii) the final status or disposition of the Base Quantity.

[31 FR 4276, Mar. 11, 1966, as amended by Amdt. 1, 33 FR 7442, May 18, 1968]

§ 967.166 Records.

Pursuant to §§ 967.46 and 967.47, any and all applicable records and accounts of producers and handlers shall be maintained and shall be made available to a certified public accountant, as agent of the committee, for audit, if requested by the committee or its manager.

[31 FR 4276, Mar. 15, 1966]

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.