

term *U.S. No. 1* shall have the same meaning as set forth in these standards. *Processing* means cooking or freezing the onions in such a way, or with such other food components, that the consistency of the product is changed. Canning and freezing shall be considered forms of processing. All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

[47 FR 8552, Mar. 1, 1982, as amended at 49 FR 4932, Feb. 9, 1984; 52 FR 19281, May 22, 1987; 52 FR 20192, May 29, 1987; 54 FR 8520, Mar. 1, 1989; 55 FR 7690, Mar. 5, 1990; 57 FR 28592, June 26, 1992; 59 FR 13431, Mar. 22, 1994; 59 FR 17267, Apr. 12, 1994; 60 FR 40748, Aug. 10, 1995; 61 FR 24878, May 17, 1996; 62 FR 19668, Apr. 23, 1997; 62 FR 38204, July 17, 1997; 63 FR 9131, Feb. 24, 1998; 65 FR 7715, Feb. 16, 2000; 68 FR 11466, Mar. 11, 2003; 68 FR 37068, June 23, 2003]

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, which appears in the Finding Aids section of the printed volume and on GPO Access.

## PART 966—TOMATOES GROWN IN FLORIDA

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AUTHORITY: 7 U.S.C. 601–674.

### Subpart—Order Regulating Handling

SOURCE: 20 FR 7357, Oct. 4, 1955, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

### DEFINITIONS

#### § 966.1 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.

#### § 966.2 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 (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 1047).

#### § 966.3 Person.

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

#### § 966.4 Production area and regulated area.

(a) *Production area* means the counties of Pinellas, Hillsborough, Polk, Osceola, and Brevard in the State of Florida, and all the counties of that State situated south of such counties.

(b) *Regulated area* means that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

[33 FR 8585, June 12, 1968, as amended at 34 FR 19186, Dec. 4, 1969]

#### § 966.5 Tomatoes.

*Tomatoes* means all varieties of the edible fruit (*Lycopersicon esculentum*) commonly known as tomatoes and grown within the production area.

#### § 966.6 Handler.

*Handler* is synonymous with *shipper* and means any person (except a common or contract carrier transporting tomatoes for another person) who, as owner, agent, or otherwise, handles fresh tomatoes or causes fresh tomatoes to be handled.

[33 FR 8585, June 12, 1968]

#### § 966.7 Handle.

*Handle* or *ship* means to sell, transport, deliver, or in any other way to place fresh tomatoes, produced in the production area, in the current of commerce within the regulated area or between any point in the regulated area and any point outside thereof. Such term shall not include the transportation, sale or delivery of field-run tomatoes within the production area by the producer thereof to a registered handler for the purpose of having such

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tomatoes prepared for market. A registered handler is a handler who has adequate facilities in the production area for grading and packing tomatoes and who is registered with the committee pursuant to rules established with the approval of the Secretary.

[34 FR 19186, Dec. 4, 1969]

**§ 966.8 Producer.**

*Producer* means any person engaged in a proprietary capacity in the production of tomatoes for market.

**§ 966.9 Grading.**

*Grading* is synonymous with *preparation for market* and means the sorting or separation of tomatoes into grades, sizes, maturities, and packs for market purposes.

**§ 966.10 Grade and size.**

*Grade* means any one of the established grades of tomatoes and *size* means any one of the established sizes of tomatoes as defined and set forth in U.S. Standards for Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title or U.S. Consumer Standards for Fresh Tomatoes (§§ 51.1900 to 51.1913 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon recommended by the committee and approved by the Secretary.

**§ 966.11 Pack.**

*Pack* means any of the packs of tomatoes as defined and set forth in the United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture (§§ 51.1855 to 51.1877 of this title), or any pack of tomatoes recommended by the committee and approved by the Secretary.

**§ 966.12 Maturity.**

*Maturity* means any of the various degrees of ripeness of tomatoes as established by the committee with approval of the Secretary as determined at the time of the inspection, pursuant to § 966.60(a).

[34 FR 19186, Dec. 4, 1969]

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**§ 966.13 Container.**

*Container* means a box, bag, crate, hamper, basket, package, tube, bulk load or any other type of unit used in the packaging, transportation, sale, shipment, or handling of tomatoes.

**§ 966.14 Varieties.**

*Varieties* means and includes all classifications or subdivisions of tomatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

**§ 966.15 Committee.**

*Committee* means the Florida Tomato Committee, established pursuant to § 966.22.

**§ 966.16 Fiscal period.**

*Fiscal period* means the period beginning August 1 and ending July 31 following.

**§ 966.17 District.**

*District* means each one of the geographic divisions of the production area initially established pursuant to § 966.24, or as reestablished pursuant to § 966.25.

**§ 966.18 Export.**

*Export* means shipment of tomatoes beyond the boundaries of the 48 contiguous States (including the District of Columbia) of the United States.

[34 FR 19186, Dec. 4, 1969]

COMMITTEE

**§ 966.22 Establishment and membership.**

(a) The Florida Tomato Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer, in the district for which selected and a resident of the production area.

[33 FR 8586, June 12, 1968]

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### § 966.23 Term of office.

(a) The term of office of committee members, and their respective alternates, shall be for 1 year and shall begin as of August 1 and end as of July 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

### § 966.24 Districts.

For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established.

*District No. 1.* The counties of Broward and Dade in the State of Florida;

*District No. 2.* The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, and St. Lucie in the State of Florida;

*District No. 3.* The counties of Charlotte, Collier, Hendry, Lee, and Monroe in the State of Florida; and

*District No. 4.* The counties of De Soto, Hardee, Highlands, Hillsborough, Manatee, Pinellas, Polk, and Sarasota in the State of Florida.

[33 FR 8586, June 12, 1968]

### § 966.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effec-

tive within less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

### § 966.26 Selection.

The Secretary shall select initially 3 members of the committee with their respective alternates, from each district.

### § 966.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers shall be held in each district to nominate members and alternates for the committee. The committee shall hold such meetings or cause them to be held prior to June 15 of each year or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate on the committee.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15 of each year, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in designating nominees for members and alternates on the committee. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and

(e) Regardless of the number of districts in which a person produces tomatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled

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in the respective district in which he elects to vote.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 8586, June 12, 1968]

### § 966.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 966.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 966.24 through 966.26 inclusive.

### § 966.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

### § 966.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 966.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 966.24 through 966.26 inclusive.

### § 966.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

### § 966.32 Procedure.

(a) Eight members of the committee shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

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

(c) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 8586, June 12, 1968; 51 FR 30474, Aug. 27, 1986]

### § 966.33 Expenses and compensation.

Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

### § 966.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

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

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

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

### § 966.35 Duties.

It shall be, among other things, the duty of the committee:

(a) At the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

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

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the

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salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to tomatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

### EXPENSES AND ASSESSMENTS

#### § 966.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursu-

ant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of tomatoes handled by him as the first handler thereof during a fiscal period and the total quantity of tomatoes handled by all handlers as first handlers thereof during such fiscal period.

#### § 966.41 Budget.

At the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

#### § 966.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles tomatoes shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all tomatoes which were regulated under this part and which were shipped by the first handler thereof during such fiscal period.

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(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective whether particular provisions thereof are suspended or become inoperative.

(e) In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, or may borrow money on a short-term basis not to exceed one full-year coinciding with the existing committee's term of office. The authority of the committee to borrow money may be used only to meet financial obligations as they occur and to allow the committee a season to adjust its reserve funds to meet any additional obligations.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 51 FR 30474, Aug. 27, 1986]

### § 966.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, he shall account to his successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during

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any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

### § 966.44 Excess funds.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, to the extent practical it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination any funds not required to defray the necessary expenses of liquidation, and after reasonable effort by the committee it is found impracticable to return such remaining funds to handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

(b) [Reserved]

[33 FR 8586, June 12, 1968]

### § 966.45 Contributions.

The committee may accept voluntary contributions but these shall only be used for production research, market research and development and marketing and promotion including paid

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advertising pursuant to §966.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use. The committee is prohibited from accepting contributions from handlers subject to the order, or any person whose contributions would constitute a conflict of interest.

[51 FR 30474, Aug. 27, 1986]

### RESEARCH AND DEVELOPMENT

#### § 966.48 Research and promotion.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of projects including 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 tomatoes. The expenses of such projects shall be paid by funds collected pursuant to §§966.42 and 966.45. Upon conclusion of each project, but at least annually, the committee shall summarize 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 project carried out under this section. Also, for each project 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.

[51 FR 30474, Aug. 27, 1986]

### REGULATION

#### § 966.50 Marketing policy.

Prior to or at the same time as initial recommendations are made pursuant to §966.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuring season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to tomatoes. The

committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size, and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

#### § 966.51 Recommendations for regulations.

The committee, upon complying with the requirements of §966.50, may recommend regulations to the Secretary whenever it finds that such regulations, as are provided for in this subpart, will tend to effectuate the declared policies of the act.

#### § 966.52 Issuance of regulations.

The Secretary shall limit the handling of tomatoes whenever he finds from the recommendation and information submitted by the Committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may:

(a) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities (including maturity as a factor of grade or quality), or packs of any or all varieties of tomatoes, during any period; or

(b) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, from different varieties, for different stages of maturity, for different portions of the production area, for different containers, for different markets, for different purposes specified in §966.54, or any combination of the foregoing, during any period; or

(c) Limit the handling of tomatoes by establishing, in terms of grades, sizes,

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or both, minimum standards of quality and maturity; or

(d) Fix the size, weight, capacity, dimensions, markings (including labels and stamps), or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 8586, June 12, 1968; 34 FR 19186, Dec. 4, 1969]

### § 966.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to §§ 966.42, 966.52, 966.54, 966.60, or any combination thereof.

### § 966.54 Shipments for special purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 966.42, 966.52, 966.53, 966.60, or any combination thereof, in order to facilitate handling of tomatoes for the following purposes:

- (a) For export;
- (b) For relief or for charity;
- (c) For processing; or
- (d) For other purposes which may be specified by the committee, with the approval of the Secretary.

### § 966.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

### § 966.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent handling of tomatoes pursuant to § 966.53 or § 966.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certifi-

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cates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship tomatoes pursuant to §§ 966.53 and 966.54; or

(2) Handlers shall obtain inspection provided by § 966.60, or pay the assessment levied pursuant to § 966.42, or both, in connection with shipments made under § 966.54; or

(3) Handlers shall obtain Certificates of Privilege from the committee to handle tomatoes effected or to be effected under the provisions of §§ 966.53 and 966.54.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that tomatoes handled by him for the purposes stated in §§ 966.53 and 966.54 were handled contrary to the provisions of this part.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of tomatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of tomatoes handled under duly issued certificates, and such other information as may be requested.

## INSPECTION

### § 966.60 Inspection and certification.

(a) During any period in which the handling of tomatoes is regulated pursuant to this subpart no handler shall handle tomatoes unless such tomatoes have been inspected and certified as meeting the requirements of this subpart by an authorized representative of the Federal or Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, and such tomatoes are covered by a valid inspection certificate except when relieved from such requirements pursuant to § 966.53 or § 966.54 or both.

(b) Insofar as the requirements of this section are concerned, the length

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of time for which an inspection certificate is valid may be established by the Secretary upon the recommendation of the committee.

(c) When tomatoes are 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.

[34 FR 19186, Dec. 4, 1969]

### EXEMPTIONS

#### § 966.70 Procedure.

The committee may adopt, with approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

#### § 966.71 Granting exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee, that by reason of a regulation issued pursuant to § 966.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's tomatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of tomatoes specified thereon. Such certificate shall be transferred with such tomatoes at time of transportation or sale.

#### § 966.72 Investigation.

The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

#### § 966.73 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken prompt-

ly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

#### § 966.74 Records.

(a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of tomatoes covered by such exemption certificates, a record of the amount of tomatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and such information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right, to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 966.70, 966.71, 966.72, 966.73, or any combination thereof.

### REPORTS

#### § 966.80 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of tomatoes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such tomatoes; and

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(4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the tomatoes were handled, together with the destination of each exempted disposition, and of all tomatoes handled pursuant to §§ 966.53 and 966.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the tomatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

MISCELLANEOUS PROVISIONS

**§ 966.81 Compliance.**

Except as provided in this subpart, no handler shall handle tomatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle tomatoes except in conformity to the provisions of this subpart.

**§ 966.82 Right of the Secretary.**

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, 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 said 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.

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**§ 966.83 Effective time.**

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

**§ 966.84 Termination.**

(a) The Secretary may, at any time, terminate the provisions of this subpart 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 may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production for market of tomatoes: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such tomatoes produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

**§ 966.85 Proceedings after termination.**

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

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the

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trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, 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 the committee and upon the said trustees.

### § 966.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments 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 subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

### § 966.87 Duration of immunities.

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

### § 966.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

### § 966.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of

the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

### § 966.90 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 person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee except for acts of dishonesty, willful misconduct, or gross negligence.

### § 966.91 Separability.

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

### § 966.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

## Subpart—Rules and Regulations

SOURCE: 21 FR 353, Jan. 19, 1956, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

### GENERAL

### § 966.100 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 Tomato Committee at its principal office.

DEFINITIONS

§ 966.110 **Order.**

*Order* means Order No. 966 (§§ 966.1 to 966.92) regulating the handling of tomatoes grown in Florida.

§ 966.111 **Marketing Agreement.**

*Marketing Agreement* means Marketing Agreement No. 125.

§ 966.112 **Terms.**

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

§ 966.113 **Registered handler certification.**

Each handler who handles tomatoes grown in the production area must be certified as a registered handler by the committee in order to ship such tomatoes outside of the regulated area. A handler who is certified as a registered handler is a handler who has adequate facilities to meet the requirements for preparing tomatoes for market, obtains inspection on tomatoes handled, agrees to handle tomatoes in compliance with the order's grade, size and container requirements, pays applicable assessments on a timely basis, submits reports required by the committee, and agrees to comply with other regulatory requirements on the handling of tomatoes grown in the production area.

(a) Based on the criteria specified in this section, the committee shall determine eligibility for certification as a registered handler. The committee or its authorized agent shall inspect a handler's facilities to determine if the facilities are adequate for preparing tomatoes for market. In order to be adequate for such purposes, the facilities must be permanent, nonportable buildings located in the production area with equipment that is nonportable for the proper washing, grading, sizing and packing of tomatoes grown in the production area.

(b) Application for certification shall be executed by the handler and filed with the committee on a form, prescribed by and available at the principal office of the committee, containing the following information:

- (1) Business name,

- (2) Address of handling facilities (including telephone and facsimile number),

- (3) Mailing address (if different from handling facility),

- (4) Number of years in tomato business in Florida,

- (5) Type of business, and

- (6) Names of senior officers, partners, or principal owners with financial interest in the business.

(c) If the committee determines from available information that an applicant meets the criteria specified in this section, such applicant shall be certified as a registered handler and shall be so informed by written notice from the committee. If certification is denied, such denial shall be made by the committee in writing, stating the reasons for denial.

(d) A registered handler's certification shall be cancelled by the committee, with the approval of the Secretary, if the handler fails to pay assessments within 45 days of the end of the assessment billing period, fails to provide reports, or no longer has adequate facilities as described in this section. Cancellation of a handler's registration shall be made in writing to the handler and shall specify the reason(s) for and effective date of such cancellation. The committee shall recertify the handler's registration at such time as the handler corrects the deficiencies which resulted in the cancellation. Certification is permanent until the committee determines, based on criteria herein, that cancellation is warranted. Persons who make deliveries of ungraded tomatoes to such certified registered handlers are hereby determined to be exempt from otherwise applicable regulations pursuant to this part.

(e) During any period in which the handling of tomatoes is regulated pursuant to this part, no handler shall obtain an inspection certifying that said handler's tomatoes meet the requirements of the marketing order unless said handler has been certified as a registered handler. Any person who is not certified as a registered handler may receive inspection on tomatoes from the Federal-State Inspection Service. Such inspection certificate shall state "Fails to meet the requirements of

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Marketing Order No. 966 because the handler is not a registered handler.”

[59 FR 51090, Oct. 7, 1994]

### SAFEGUARDS

#### § 966.120 Application for Certificate of Privilege.

(a) Whenever handling is regulated pursuant to § 966.54, each handler desiring to make shipments of tomatoes for any of the following purposes shall, prior thereto, apply to the committee for and obtain a Certificate of Privilege permitting such shipment:

- (1) For pickling, or
- (2) For processing, or
- (3) For experimental purposes, or
- (4) For relief or charity, or
- (5) For export, or

(6) For other purposes which may be specified by the committee, with the approval of the Secretary.

(b) Applications for Certificates of Privilege shall be made on forms furnished by the committee. Each application shall contain the name and address of the handler, and such other information as such committee may require, such as, but not limited, to the quantity (by grade, size, quality, and variety) of tomatoes to be shipped, the mode of transportation, consignee, destination, and other appropriate information or documents necessary to safeguard against the entry of such tomatoes into trade channels other than those for which the Certificate of Privilege is granted.

[21 FR 353, Jan. 19, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 59 FR 51091, Oct. 7, 1994]

#### § 966.121 Issuance.

The committee, or its duly authorized agents, shall give prompt consideration to each application for a Certificate of Privilege and shall determine whether the application is approved. Approval of an application shall be evidenced by the issuance of a Certificate of Privilege authorizing the applicant named therein to ship tomatoes for a specified purpose for a specified period of time.

#### § 966.122 Reports.

Each handler handling tomatoes under and pursuant to a Certificate of

Privilege shall supply the committee with a report thereon within the time specified on the application for such certificate showing the name and address of the shipper, car or truck identification, loading point, destination, consignee, and, when inspection is required, the Federal-State Inspection Certificate number.

#### § 966.123 Denial and appeal.

The committee may rescind a Certificate of Privilege issued to a handler, or deny a Certificate of Privilege to a handler, upon proof satisfactory to such committee, that such handler has shipped tomatoes contrary to the provisions of this part. Such committee action denying a Certificate of Privilege shall apply to and not exceed a reasonable period of time as determined by such committee. Any handler who has been denied a Certificate of Privilege, or who has had a Certificate of Privilege rescinded, may appeal to the committee for reconsideration. Such appeal shall be in writing.

#### § 966.124 Approved receiver.

(a) *Approved receiver.* Any person who desires to acquire, as an approved receiver, tomatoes for purposes as set forth in § 966.120(a), shall annually, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information:

(1) Name, address, contact person, telephone number, and e-mail address of applicant;

(2) Purpose of shipment;

(3) Physical address of where manufacturing or other specified purpose is to occur;

(4) Whether or not the receiver packs, repacks or sells fresh tomatoes;

(5) A statement that the tomatoes obtained exempt from the fresh tomato regulations will not be resold or transferred for resale, directly or indirectly, but will be used only for the purpose specified in the corresponding certificate of privilege;

(6) A statement agreeing to undergo random inspection by the committee;

(7) A statement agreeing to submit such reports as is required by the committee.

## § 966.130

(b) The committee, or its duly authorized agents, shall give prompt consideration to each application for an approved receiver and shall determine whether the application is approved or disapproved and notify the applicant accordingly.

(c) The committee, or its duly authorized agents, may rescind a person's approved receiver status upon proof satisfactory that such a receiver has handled tomatoes contrary to the provisions established under the Certificate of Privilege. Such action rescinding approved receiver status shall apply to and not exceed a reasonable period of time as determined by the committee or its duly authorized agents. Any person who has been denied as an approved receiver or who has had their approved receiver status rescinded, may appeal to the committee for reconsideration. Such an appeal shall be made in writing.

[70 FR 53540, Sept. 9, 2005]

### EXEMPTION PROCEDURES

#### § 966.130 Application.

Any person applying for exemption from regulations issued pursuant to § 966.52 shall file such application with the committee, or its duly authorized agent for such purpose, on forms to be furnished by such committee. Each application shall state the name and address of the applicant, the grade, size, and quality regulations from which exemption is requested; and facts demonstrating that the tomatoes, for which exemption is requested, were adversely affected by acts beyond his control or by acts beyond the applicant's reasonable expectation. Applications shall set forth such additional information as the committee may find necessary in making determinations with respect thereto, including, without limitation thereto, the information required on producers' applications by paragraphs (a) and (b) of this section.

(a) The location and acreage of the farm on which tomatoes for which exemption is requested, the location where such tomatoes are to be prepared for market, and the loading point from which such tomatoes are to be shipped if exemption is granted;

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(b) Quantity (by grade, size, quality, and variety) of tomatoes harvested during the current season or any specific portion thereof prior to the date of application and to be harvested, subsequent to such date, during the remainder of the current season or any specific portion thereof (as may be determined pursuant to this part); an estimate of the portion of such tomatoes which can be handled under regulation issued pursuant to § 966.52, during the remainder of the season; and the reasons why all of such tomatoes cannot be handled under such regulations.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

#### § 966.131 Investigations.

The committee may authorize investigations of applications by its employees, and such other persons as may be necessary to procure adequate information to pass upon the merits of such applications.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

#### § 966.132 Issuance.

(a) The committee, or its duly authorized agents, shall give prompt consideration to all statements and facts relating to each application for exemption, and, pursuant to applicable provisions of this part, a determination shall be made as to whether or not the application is approved. The determination, if approving the application, shall be evidenced by the issuance of a certificate of exemption pursuant to § 966.71: *Provided*, That a separate certificate may be issued, at the request of an applicant, for each affected field.

(b) The applicant shall be notified in writing if his request for exemption is denied.

(c) Each exemption certificate issued pursuant to this subpart shall be on a form duly approved by the committee and signed by an authorized representative of such committee. At least one copy of each exemption certificate issued shall be retained in the committee records. Each such certificate shall contain the name and address of the recipient, the location of all tomatoes authorized to be shipped thereunder, the quantity (by grade, size,

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quality and variety) of tomatoes which will be permitted in the exempted shipments and such other information as may be deemed necessary by the committee to provide such committee, the recipient, or both, with adequate and specific information regarding such exempted tomatoes.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

### § 966.133 Disposition of certificates.

(a) Each lot of tomatoes handled under an exemption certificate shall be accompanied by such certificate, or such appropriate identifying information with respect to such certificate, as the committee may require, to facilitate the administration of regulatory provisions applicable thereto.

(b) Each shipment of a lot or portion thereof, of tomatoes covered by an exemption certificate shall be accompanied by a Federal-State Inspection Certificate which shall show the exemption certificate number covering the lot.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

### § 966.134 Reports.

Persons handling tomatoes under exemption certificates shall, at such times as may be specified in such certificates, report thereon to the committee the names and addresses of the receivers of such tomatoes, the quantity shipped (by grade, size, quality, and variety), the inspection certificates issued with respect thereto, the dates of such shipments, and such other information as may be requested by such committee in order to administer the regulatory provisions applicable thereto.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

### § 966.135 Appeals.

If any applicant is dissatisfied with the determination of the committee regarding an application for an exemption certificate, or any duly issued exemption certificate an appeal by such applicant may be taken to such committee in accordance with § 966.73.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

## INSPECTION

### § 966.140 Truck shipments.

In case of the transportation by truck outside of the production area of any tomatoes which are required to be inspected and certified as complying with any applicable requirements under this part, such tomatoes shall be accompanied by, and made available for examination at any time upon request, a copy of the appropriate inspection certificate or a copy of the appropriate transfer clearance receipt issued by the Federal-State Inspection Service, the official inspection agency for this program, showing that such tomatoes have been so inspected and certified.

[21 FR 3000, May 5, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 65 FR 8253, Feb. 18, 2000]

## INTERPRETATIVE RULES

### § 966.150 Meaning of "producer".

The term "producer" is defined in § 966.8 as being any person engaged in a proprietary capacity in the production of tomatoes for market. Under the definition of "tomatoes" in § 966.5, such production must have been in the production area. Section 966.22 provides that each person selected as a committee member or alternate must be a producer, or an officer or an employee of a corporate producer. Section 966.27 provides that producers may vote for nominees for members and alternates on the Florida Tomato Committee, the administrative agency established pursuant to said marketing agreement and order. Section 966.3 defines a person as an individual, partnership, corporation, association, or other business unit. The term "person" is construed to mean the business unit which produces the tomatoes for market.

(a) The prevailing principle which shall apply to the determination of "producer" is who or which interest as a unit, whether an individual, partnership, corporation, association, or any other business unit, has the authority to pass title to the tomatoes grown and made a part of the marketable supply of tomatoes. In other words, the terms shall be limited to those who have an

ownership in tomatoes produced in the production area.

(b) *Producer* means any person, as defined in this section: (1) Who or which owns and farms land resulting in his or its ownership of the tomatoes produced thereon; (2) who or which rents or farms land, resulting in his or its ownership of all or a portion of the tomatoes 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 tomatoes produced thereon.

(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, tenants by entirety, or, under community property laws, as community property. The term "partnership" shall also be deemed to include individuals, partnerships or corporations which join together by agreement, informal or otherwise, for the purpose of growing tomatoes and which, as a unit, have authority to transfer title to such tomatoes at the time they are harvested or subsequent thereto. 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 growing of tomatoes and the authority to transfer title to the tomatoes so produced from that business unit to some other parties in the marketing chain.

(d) Each legal entity, whether an individual, a partnership, a "joint venture," or a corporation, so engaged in the production of tomatoes for market shall have one vote for each position which is to be filled for the district for which he or it is eligible to vote. In the case of a partnership or a "joint venture," such vote shall not be accepted in the absence of unanimous agreement of the respective members. In the case of a corporation, such vote shall be cast pursuant to the authorization of its board of directors. In the case of a person who owns land which he or it does not farm but, as rental for such land, obtains the ownership of a por-

tion of the tomatoes produced thereon, such person shall be regarded as the producer of that portion and entitled to one vote, and the tenant on such land shall be regarded as the producer of the remaining portion produced on such land and also entitled to one vote.

(e) A producer eligible to vote is a person who produced tomatoes for market in a proprietary capacity in the production area during the then current fiscal period, i.e., between August 1, of the previous year and July 31 of the then current year. If a person who would otherwise qualify as a producer in a proprietary capacity in the production area planted tomatoes for market as fresh tomatoes during the current fiscal period, but (1) did not market any tomatoes in the fresh market during the current fiscal period due to adverse weather conditions, or (2) has tomatoes in production for fresh market during the current fiscal period, although still unharvested, he shall, nevertheless, be eligible as a producer to vote for committee nominees, if he produced and marketed tomatoes grown in the production area in the next preceding fiscal period.

[23 FR 2588, Apr. 19, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961]

#### REESTABLISHMENT OF DISTRICTS

##### § 966.160 Reestablishment of districts.

(a) District No. 1: The county of Dade in the State of Florida.

(b) District No. 2: The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, St. Lucie, and Broward in the State of Florida.

(c) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

[35 FR 19633, Dec. 25, 1970]

##### § 966.161 Reapportionment of Committee Membership.

Pursuant to § 966.25, industry membership on the Florida Tomato Committee shall be reapportioned as follows:

(a) District 1—two members and their alternates.

(b) District 2—two members and their alternates.

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(c) District 3—four members and their alternates.

(d) District 4—four members and their alternates.

[50 FR 3738, Jan. 28, 1985, as amended at 60 FR 5560, Jan. 30, 1995]

**Subpart—Assessment Rates**

**§ 966.234 Assessment rate.**

On and after August 1, 2003, an assessment rate of \$0.025 per 25-pound container or equivalent is established for Florida tomatoes.

[68 FR 70691, Dec. 19, 2003]

**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 2<sup>9</sup>/<sub>32</sub> 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 <sup>9</sup> / <sub>32</sub>	2 <sup>19</sup> / <sub>32</sub>
6×6 .....	2 <sup>17</sup> / <sub>32</sub>	2 <sup>29</sup> / <sub>32</sub>
5×6 .....	2 <sup>25</sup> / <sub>32</sub>	

(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.

(5) Make shipments only to those who have qualified with the committee as approved receivers.

(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 must meet all of the requirements of this section except for the requirement that all containers must be packed at registered handler facilities as specified in paragraph (a)(3)(ii) of this section, and the requirement that such tomatoes designated as size 6 × 6 must meet the maximum diameter requirement specified in paragraph (a)(2)(i) of this section: *Provided*, That 6 × 6 and larger is used to indicate the listed size designation on containers.

(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, resorting, 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. Further, all processing procedures must result in a product that does not require refrigeration until opened. *Pickling* as used in §§966.120 and 966.323 means to preserve tomatoes in a brine or vinegar solution. *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; 64 FR 45413, Aug. 20, 1999; 65 FR 66495, Nov. 6, 2000; 66 FR 48532, Sept. 21, 2001; 70 FR 53540, Sept. 9, 2005]

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, which appears in the Finding Aids section of the printed volume and on GPO Access.

## PART 979—MELONS GROWN IN SOUTH TEXAS

### Subpart—Order Regulating Handling

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