

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 63 FR 39697 on July 24, 1998, is adopted as a final rule without change.

Dated: October 6, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV98-966-2 IFR]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Producer Field-Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the handling requirements currently prescribed under the Florida tomato marketing order. The marketing order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). This rule exempts shipments of producer field-packed tomatoes from the container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities. This rule will allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes. This will facilitate the movement of Florida tomatoes and should improve returns to producers.

DATES: Effective October 10, 1998; comments received by December 14, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632; or E-mail: moabddocket_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for

public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Christian D. Nissen, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of 2⁹/₃₂ inches in diameter. Current pack and container requirements outline the types of information that needs to appear on a container, weight restrictions the packed containers must meet, and that the containers must be packed at a registered handler's facility.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. It includes the authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order.

Section 966.323 specifies the handling regulations issued under the order. Section 966.323(a)(3)(i) requires that certain types of tomatoes packed by registered handlers be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight can not be less than the designated weight or exceed the designated weight by more than two pounds. Section 966.323(a)(3)(ii) currently requires that certain types of tomatoes be packed by registered handlers in containers that are marked with the designated net weight and with the name and address of the registered handler, and that such containers must be packed at the registered handler's facilities.

This rule changes the handling regulations under the order. This rule defines producer field-packed tomatoes and will allow handlers to ship field-packed tomatoes exempt from the net weight requirements. This rule also exempts producer field-packed tomatoes from the requirement that all tomatoes be packed at a registered handler's facility. These tomatoes will still be subject to all other provisions of the handling regulation, including established grade, size, pack and inspection requirements. These tomatoes also would continue to be subject to assessments. The committee met September 11, 1998, and unanimously recommended this change.

In its discussion of this rule, the committee recognized that the market for red, ripe tomatoes or vine-ripes is continuing to grow. Place packed vine-ripe tomatoes are shipped from many foreign and domestic growing areas, and currently maintain a strong and growing

market share. Committee members stated that the popularity of the red, ripe tomato is evident in the increasing popularity of greenhouse and hydroponic tomatoes. These tomatoes tend to be marketed at a red, mature stage. Customer studies have shown that consumers prefer tomatoes that are of high color, and that are mature and ready to eat. According to a committee study, retailers believe that the vine-ripe tomato is the tomato of the future. The committee stated that this is the fastest growing market segment.

Currently, the majority of Florida tomatoes are shipped at the mature green stage. Vine-ripe tomatoes represent only about 12 percent of total fresh shipments (6,501,630 of 47,633,160 25-pound containers shipped during the 1997-98 season). In an effort to put the industry in a more advantageous position to take advantage of this growing market, and to improve returns to producers, the committee recommended changes to the order's rules and regulations. These changes were recommended to help facilitate the movement of more vine-ripe tomatoes from Florida. To accomplish this, the committee recommended changes to the regulations to define a producer field-packed tomato and provide exemptions for such tomatoes to facilitate their movement. Producer field-packed tomatoes are defined as tomatoes which at the time of inspection are No. 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 of the rules and regulations. The tomatoes are then transferred to the registered handler's facilities for final preparation for market and for inspection.

Most tomatoes from Florida are packed and shipped at the mature green stage. Shipments of mature green tomatoes represented approximately 88 percent of total fresh shipments during the 1997-98 season. Tomatoes are picked and packed at the mature green stage to facilitate handling. The vast majority of mature green tomatoes are packed using a mechanized process. The tomatoes are brought to the packing house where they are washed, run across sizing equipment, and then are packed in volume fill containers. At the mature green stage, the tomatoes are firm and are able to handle the packing process. This is an efficient process that facilitates packing in volume.

However, when trying to pack a tomato that is more ripe and mature, the process used to pack mature greens is not as effective. This is because as the

tomato begins to ripen it begins to soften. Tomatoes of No. 3 color and above cannot handle the rigors of the mechanized handling process. This packing process bruises and damages more mature tomatoes, increasing the volume of culls and those that fail inspection for grade.

To provide a better way to handle mature tomatoes, and to provide for a greater volume of such tomatoes from Florida, the committee recommended developing a producer field-packed tomato. To facilitate the handling of this tomato the committee recommended that it be exempt from two parts of the handling regulations. This rule exempts producer field-packed tomatoes from the requirement that tomatoes be packed at a registered handler's facility, and the designated net weight requirements.

Section 966.323 (a)(3)(ii) specifies in part that all tomatoes are to be packed at a registered handler's facilities. This rule exempts producer field-packed tomatoes from this requirement. By providing this exemption, the number of times the tomato is handled is reduced. Mature green tomatoes can withstand the multiple handling involved in its process, a more mature tomato cannot. Under this exemption, the producer field-packed tomato would only be handled once, when it was picked and packed in the field. It will not be subjected to the rigors of a mechanical process. Under this process, the tomatoes will be sized, cleaned, and packed by hand. This process of picking and packing in the field will make it substantially easier to pack a tomato of higher color and maturity. As per the requirement for all packed tomatoes for shipment outside the regulated area, new boxes must be used. The tomatoes are delivered to a registered handler for final preparation for market. The tomatoes will be inspected for grade, size, and proper pack after delivery to the registered handler.

This rule also exempts producer field-packed tomatoes from the net weight requirements specified in the rules and regulations. Section 966.323(a)(3)(i) currently requires that certain types of tomatoes packed by registered handlers be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight can not be less than the designated weight or exceed the designated weight by more than two pounds.

By definition, producer field-packed tomatoes will be place packed in the field. Place packing a container requires a fixed number of tomatoes to fill the container. In place packing, the tomatoes are packed in layers, with the fill determined by the size of the tomato,

dimensions of the container, and the way the tomatoes are positioned in the box. To facilitate this type of pack, most handlers use plastic cells, cardboard partitions, or trays to position the tomatoes. The majority of place packed tomatoes are sold by count per container rather than by weight.

Most tomatoes shipped in Florida are shipped at the mature green stage, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. Mature green tomatoes are not as susceptible to bruising and other damage during packing and transport as are producer field-packed tomatoes. If volume fill was used to pack producer field-packed tomatoes, serious product bruising would result which would detract from the appearance and marketability of these tomatoes.

However, place packing does not lend itself well to meeting a required net weight. The tomatoes have to be properly sized and placed to fit snugly in the container. During the harvesting season, the weight of equal size tomatoes may vary dramatically. When tomatoes are place packed, the handler cannot add extra tomatoes when the container weight is light. Because the tomatoes are packed in layers, when a layer is complete there are no spaces for additional tomatoes. Similarly, when the tomatoes are heavy, the handler cannot remove a tomato to meet a weight requirement. Buyers expect a full pack with no spaces, and a missing tomato could result in a loose pack which could allow shifting or bruising during transport and would be a marketing problem. To overcome this problem, the committee recommended that shipments of producer field-packed tomatoes as defined herein, be exempt from the container net weight requirements of the rules and regulations.

The committee is focusing on ways to continue to be competitive, develop new markets, and increase grower returns. The committee believes this change will provide the industry with more flexibility and additional marketing opportunities.

The committee believes that producer field-packed tomatoes will increase the volume of vine-ripe tomatoes available from Florida. This has been a market that has been expanding and not traditionally served by much volume from the Florida tomato industry. The committee also believes that this change will allow producers to harvest tomatoes that might otherwise have been left in the field. There is also an

indication that handlers will be willing to pay a higher price for producer field-packed tomatoes. The committee believes that the higher prices combined with additional tomato sales should increase returns to producers.

There are other changes made by this rule. Currently, yellow meated tomatoes, specialty packed red ripe tomatoes, single layer and two layer place packed tomatoes, and now producer field-packed tomatoes as well, are exempt from the container net weight requirement in § 966.323(a)(3)(i). In its discussion, the committee said that § 966.323(a)(3)(ii) states that each container or lid shall be marked to indicate the designated net weight. They said that in the past, there had been some confusion as to how this applies to those tomatoes exempt from net weight. The committee voted unanimously to exempt those tomatoes exempt from net weight from the requirement that net weight appear on the container or lid to rectify this problem. This rule makes this change. Finally, the first sentence of § 966.323(d)(1) is changed to delete unnecessary language.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. Small agricultural service firms, which includes handlers,

have been defined by the Small Business Administration (SBA) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000 (13 CFR 121.601).

Based on the industry and committee data for the 1997-98 season, the average annual f.o.b. price for fresh Florida tomatoes during the 1997-98 season was around \$9.11 per 25 pound equivalent, and total fresh shipments for the 1997-98 season are estimated at 47.6 million 25 pound equivalent cartons of tomatoes. Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1997-98 season, and the 1997-98 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

Under § 966.52 of the Florida tomato marketing order, the committee, among other things, has authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order. This rule defines a producer field-packed tomato and provides exemptions for such tomato from the net weight requirements and the requirements that tomatoes be packed at a registered handler's facilities. This rule will allow for the place packing of ripe tomatoes in the field. Vine ripe tomatoes represent only about 12 percent of total fresh shipments (6,501,630 of 47,633,160 25-pound containers shipped during the 1997-98 season).

The committee recommended this change to improve the marketing of Florida tomatoes and follow the trend of increased demand for red, mature tomatoes. This trend is in response to a strong consumer demand for such tomatoes. This rule will allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for these vine-ripe tomatoes. This will facilitate the movement of Florida tomatoes and should improve returns to producers.

Producer field-packed tomatoes are defined as tomatoes which at the time of inspection are No. 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 of the rules and regulations. The tomatoes are then transferred to the registered

handler's facilities for final preparation for market and for inspection.

This rule will have a positive impact on affected entities. The changes were recommended to provide additional flexibility in the packing of tomatoes of higher color and maturity.

Providing an exemption for producer field-packed tomatoes from the requirement that tomatoes be packed at a registered handler's facilities, reduces the number of times the tomato is handled. It also facilitates the packing of producer field-packed tomatoes free from the mechanized process of grading and sizing used for mature green tomatoes. Tomatoes of No. 3 color and above cannot handle the rigors of the mechanized handling process. This packing process bruises and damages more mature tomatoes, increasing the volume of culls and those that fail inspection for grade. By providing this exemption, the producer field-packed tomato would only be handled once, when it was picked and packed in the field. This will make it substantially easier to pack a tomato of higher color and maturity.

The exemption from the net weight requirements will allow the producer field-packed tomatoes to be place packed. It is very difficult to pack to a specified weight when place packing containers. Place packing a container requires a fixed number of tomatoes to fill the container. In place packing, the tomatoes are packed in layers, with the fill determined by the size of the tomato, dimensions of the container, and the way the tomatoes are positioned in the box. The majority of place packed tomatoes are sold by count per container rather than by weight. However, the place pack method of packaging does not lend itself well when packing to meet a required net weight.

During the harvesting season, the weight of equal size tomatoes may vary dramatically. If the producer field-packed tomatoes are light in weight, handlers cannot add extra tomatoes to meet net weight because the pack is full, or if the tomatoes are heavier than normal, removing a tomato to meet net weight would mean leaving an empty space. Buyers expect a full pack with no spaces, and a missing tomato could result in a loose pack which could allow shifting or bruising during transport and would be a marketing problem. To overcome this problem, the committee recommended that shipments of producer field-packed tomatoes as defined herein, be exempt from the container net weight requirements of the rules and regulations.

In an effort to put the industry in a more advantageous position to take

advantage of this growing market, and to improve returns to producers, the committee recommended these changes. According to committee funded research, retailers consider vine-ripe tomatoes to be the tomato type of the future. This has been a market that has been expanding and it is a market where the Florida tomato industry has room to grow and expand its market share. The committee believes that producer field-packed tomato will increase the volume of vine-ripe tomatoes available from Florida. The committee also believes that it will allow producers to harvest tomatoes that might otherwise have been left in the field. There is also an indication that handlers will be willing to pay a higher price for producer field-packed tomatoes. The committee believes that the higher prices combined with additional tomato sales should increase returns to producers.

There are some additional costs associated with packing in the field. Picking, grading, and sizing by hand is more time consuming and costly than by machine. However, there are indications that producer field-packed tomatoes will command a higher price. Also, the regulated industry is not required to use this exemption. Therefore, the additional costs are voluntary.

These changes are intended to provide additional flexibility for all those covered under the order. The opportunities and benefits of this rule are expected to be equally available to all tomato handlers and growers regardless of their size of operation. This action will have a beneficial impact on producers and handlers since it will allow tomato handlers to make additional supplies of tomatoes available to meet consumer needs consistent with crop and market conditions.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the tomato industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the September 11, 1998, meeting was a public meeting and all entities, both large and small, were able

to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling requirements currently prescribed under the Florida tomato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This change is a relaxation of current requirements; (2) the Florida tomato season begins October 10; (3) the committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (d)(1) and the first sentence in paragraph (g) to read as follows:

§ 966.323 Handling regulations

* * * * *

(d) *Exemption.* (1) *For types.* The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes. Specialty packed red ripe tomatoes, yellow

meated tomatoes, and single layer and two layer place packed tomatoes are exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, and the requirement that each container or lid shall be marked to indicate the designated net weight as specified in paragraph (a)(3)(ii) of this section, but must meet the other requirements of this section. Producer field-packed tomatoes are also exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, the requirement that each container or lid shall be marked to indicate the designated net weight as specified in paragraph (a)(3)(ii) of this section, and the requirement that all containers must be packed at the registered handler's facilities as specified in paragraph (a)(3)(ii) of this section, but must meet the other requirements of this section.

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(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. * * *

Dated: October 8, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AF84

Minor Revision of Design Basis Accident Dose Limits for Independent Spent Fuel Storage and Monitored Retrieval Storage Installations

AGENCY: Nuclear Regulatory Commission.