

new sentence at the beginning of paragraph (a), and adding paragraph (e) to read as follows:

**§ 718.105 Tolerances, variances, and adjustments for tobacco and peanuts.**

(a) Tolerance or variance for tobacco and peanuts is the amount by which the determined acreage may differ from the reported acreage or allotment and still be considered in compliance with program requirements. \* \* \*

\* \* \* \* \*

(e) Tolerance for peanuts is the larger of 1.0 acre or 5 percent of the reported acreage, not to exceed 10.0 acres.

**PART 729—PEANUTS**

3. The authority citation for part 729 is revised to read as follows:

**Authority:** 7 U.S.C. 1301,1357 *et. seq.*, 1372, 1373, 1375; 7 U.S.C. 7271; and 15 U.S.C. 714b and 714c.

4. The definition of “*Considered produced credit*” in § 729.103 is amended by:

(a) Adding the phrase “one or more of the following as may apply” after the phrase “the amount of” and before the colon in the introductory sentence.

(b) Removing “704” and adding “1410” in its place and removing the word “chapter” and adding the word “title” in its place in paragraph (v).

5. Section 729.202 is revised to read as follows:

**§ 729.202 Reserve for corrections.**

The Director, TPD, will hold a national reserve for purposes of correcting errors that are made in determining farm quotas. The Director will determine the reserve annually by multiplying the national quota announced by the Secretary by 0.0025. To the extent determined appropriate, the Director may authorize a State committee to correct any error in a farm’s quota.

6. Paragraph (e) of § 729.204 is amended by revising the first sentence to read as follows:

**§ 729.204 Temporary seed quota allocation.**

\* \* \* \* \*

(e) *Penalty for erroneous certification.* If the certified acreage on which the temporary seed quota allocation is made is greater than the determined acreage, by more than the larger of 1 acre or 5 percent of the certified acreage not to exceed 10 acres, and the producer marketed the production for the acreage based upon an allocation of temporary seed quota on certified acres not determined, a penalty will be determined by multiplying the

difference between the certified and determined acreage times the applicable per acre seeding rate times 140 percent of the per pound quota support rate for the applicable crop year. \* \* \*

7. Paragraph (a) of § 729.207 is amended by adding a new sentence at the end of the paragraph to read as follows:

**§ 729.207 Tenants sharing in increased quota.**

(a) *General.* \* \* \* Farms ineligible for quota allocation under § 729.205 do not receive a quota increase; therefore, the provisions of this section with respect to tenant share are not applicable to such farms.

\* \* \* \* \*

**§ 729.208 [Amended]**

8. Paragraph (b) of § 729.208 is amended by removing the phrase “State reserve” and adding the phrase “national reserve” in its place.

**§ 729.214 [Amended]**

9. Section 729.214 is amended:

(a) In paragraph (b)(4) by removing the comma after the first occurrence of the word “witness” and adding with a period and removing the remainder of the first sentence.

(b) In paragraph (f)(3)(i) by adding the phrase “by sale” to follow the word “quota” in the heading and by removing the phrase “or otherwise” and adding in its place the word “and” in the text.

10. Paragraph(b) of § 729.305 is amended by adding a new sentence at the end of the paragraph to read as follows:

**§ 729.305 Peanuts on which penalties are due and refund of excess penalty collected.**

\* \* \* \* \*

(b) \* \* \* In addition, in the case of a false certification, the sanctions provided for in § 729.204(e) shall apply except to the extent that it may be determined by the Deputy Administrator that a second assessment would be unduly redundant.

\* \* \* \* \*

**PART 1446—PEANUTS**

11. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

12. 7 CFR part 1446 is amended by removing the term “ASCS” in each occurrence in the regulations and adding the term “FSA” in its place.

13. Section 1446.103 is amended by:

(a) Adding “1400” in its proper numerical order, removing “1498”, and

moving the first occurrence of “and” to its proper grammatical place in the series of numbers in the first sentence of the introductory paragraph.

(b) Removing the definition of “DASCO” and adding in its proper alphabetical order the definition

\* \* \* \* \*

*DAFP.* The Deputy Administrator for Farm Programs, FSA.

\* \* \* \* \*

(c) Removing “1498” and adding “1400” in its place in paragraph (3)(iii) of the definition of “Eligible producer.”

14. Paragraph (a)(7) of § 1446.309 is amended by removing the word “type” in each occurrence and adding the term “type or Segregation” in its place.

15. Paragraph (b)(2) of § 1446.801 is amended by removing the acronym “ASC” in the second sentence of the introductory paragraph and adding the acronym “FSA” in its place.

Signed at Washington, D.C., on February 10, 2000.

**Parks Shackelford,**

*Acting Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 00–3687 Filed 2–17–00; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 966**

[Docket No. FV98–966–2 FIR]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, with a change, the provisions of an amended interim final rule changing the handling requirements prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). This rule continues to exempt 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 also continues to exempt shipments of certain-sized producer field-packed tomatoes from a

maximum size requirement specified in the handling regulation. Continuation of these exemptions will allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes, facilitate the movement of Florida tomatoes, and should continue to improve returns to producers.

**EFFECTIVE DATE:** March 20, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Christian D. Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, 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) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**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 marketing agreement and order are 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 the 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 2<sup>7</sup>/<sub>32</sub>; inches in diameter. Current pack and container requirements outline the types of information that need 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 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.

The order's handling regulation, § 966.323, specifies the regulations for Florida tomatoes. 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 cannot 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 continues in effect changes to the handling regulation under the order. This rule continues to define producer field-packed tomatoes and allows handlers to ship field-packed tomatoes exempt from the net weight requirements. This rule also continues to exempt producer field-packed tomatoes from the requirement that all tomatoes be packed at a registered handler's facility.

In addition, this rule continues to exempt shipments of certain-sized

producer field-packed tomatoes from a maximum diameter requirement specified in the handling regulation. Specifically, field-packed tomatoes designated as size "6 x 6" may be larger than 2<sup>7</sup>/<sub>32</sub>; inches in diameter. This rule continues to make a related change to the labeling requirement for 6 x 6-sized field-packed tomatoes. The field-packed tomato exemption also was revised for clarity, and is continued in effect.

These tomatoes will still be subject to all other provisions of the handling regulation, including established grade, size, container, pack, and inspection requirements. These tomatoes also will continue to be subject to assessments. The committee met September 11, 1998, and May 26, 1999, and unanimously recommended these changes.

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.

#### Field-Packed Tomatoes Defined

Currently, the majority of Florida tomatoes are shipped at the mature green stage. Vine-ripe tomatoes represent only about 15.5 percent of total fresh shipments (8,791,389 of 56,706,685 25-pound containers shipped during the 1998-99 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 handling regulation. 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.

Shipments of mature green tomatoes represented approximately 84.5 percent of total fresh shipments during the 1998–99 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 certain parts of the handling regulations. This rule continues to exempt producer field-packed tomatoes from the requirement that tomatoes be packed at a registered handler's facility, and the designated net weight requirements. It also continues in effect the requirement that 6 × 6-sized producer field-packed tomatoes be exempt from the 2<sup>27</sup>/<sub>32</sub> inch maximum diameter.

#### **Field-Packed Tomatoes Exempt From Being Packed at Registered Handler Facilities**

Section 966.323(a)(3)(ii) specifies, in part, that all tomatoes are to be packed at a registered handler's facilities. This rule continues to exempt 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 this process, a more mature tomato cannot. Under this exemption, the producer field-packed tomato only

needs to be handled once, when it is picked and packed in the field. It is not subjected to the rigors of a mechanical process. Under the producer field-packed process, the tomatoes are sized, cleaned, and packed by hand. This process of picking and packing in the field makes it substantially easier to pack a tomato of higher color and maturity. All tomatoes for shipment outside the regulated area must be packed in new boxes. The tomatoes are delivered to a registered handler for final preparation for market. The tomatoes are inspected for grade, size, and proper pack after delivery to the registered handler's facility.

#### **Field-Packed Tomatoes Exempt From Net Weight Requirements**

This rule also continues to exempt 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 cannot 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.

#### **“6 × 6” Field-Packed Tomatoes Maximum Size Requirement Exemption**

Because the tomatoes are packed in the field, the tomatoes are sized by hand, not using the precision of sizing belts. While field-packed tomatoes are successfully meeting minimum size requirements, some lots were having difficulty meeting the maximum size requirements as specified for the 6 × 6 size designation.

Currently, section 966.323(a)(2)(i) specifies that all tomatoes packed by a registered handler must meet a minimum size requirement of 2<sup>9</sup>/<sub>32</sub> inches in diameter. That section also requires that all such tomatoes must be sized with proper equipment in one of three specified ranges of diameter. For example, tomatoes designated as “6 × 7” must be a minimum of 2<sup>9</sup>/<sub>32</sub> inches in diameter and a maximum of 2<sup>19</sup>/<sub>32</sub>. Tomatoes, other than producer field-packed tomatoes, designated as “6 × 6” must be a minimum of 2<sup>17</sup>/<sub>32</sub> inches in diameter and a maximum of 2<sup>27</sup>/<sub>32</sub> inches in diameter. Tomatoes designated as “5 × 6” must be a minimum of 2<sup>25</sup>/<sub>32</sub> inches in diameter with no maximum size requirement. Finally, to allow for variation incident to proper sizing, not more than a total of 10 percent, by count, of the tomatoes in the lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

Since the handling regulation was changed in October 1998 to exempt field-packed tomatoes from certain handling requirements, some 6 × 6-sized lots failed inspection due to oversized tomatoes in the pack. As stated above, 6 × 6-sized lots of tomatoes previously had to meet both minimum and maximum size requirements, within specified tolerances. Tomatoes that are run over a sizing belt in a packing house

have little difficulty in meeting these requirements. However, producers packing tomatoes in the field must use hand-sizers. It is relatively easy to pick to a minimum size. However, it is much more difficult to pick tomatoes within a range of fractions of an inch.

Presenting a packed lot of tomatoes for inspection, and having it fail is costly. The handler can either find an outlet other than the fresh market for the tomatoes or rework the lot so it passes inspection. In the case of field-packed tomatoes, reworking a lot is substantially more difficult. The tomatoes cannot be dumped then run across the machinery again to ensure that they meet inspection, but must be sorted through by hand. This is extremely time-consuming, and because the fruit is ripe, can cause additional bruising. In most cases, it is one or two tomatoes in a box that cause it to fail for size. Thus, the committee met in May 1999 and recommended the change for producer field-packed tomatoes.

The committee recommended that 6 x 6-sized producer field-packed tomatoes be exempt from the 2<sup>27</sup>/<sub>32</sub> inch maximum diameter requirement specified in § 966.323(a)(2)(i) of the handling regulation. The amended interim final rule published on August 20, 1999 (64 FR 45409) implemented the recommendation and this action continues to allow for additional oversized tomatoes, without the lot failing for size. While this change does allow for additional larger tomatoes to be included in the 6 x 6 pack, there is still a distinction between it and the 5 x 6. The 6 x 6 pack is an opportunity to sell a smaller tomato. This change provides some additional flexibility to address sizing problems relating to packing in the field. The 5 x 6 tomato is still the premium size, demanding the higher price. For this reason, the vast majority of tomatoes that meet the size requirements for 5 x 6 will continue to be packed in a 5 x 6 container. Also according to the committee, buyers should not object to oversized fruit in the 6 x 6 pack because they have the option of grading it out for a premium product or passing it on to their customers as a larger tomato at a less expensive price.

#### **“6 x 6” Field-Packed Tomatoes Must Be Labeled as “6 x 6 and Larger”**

The committee also recommended a related change in the labeling requirement specified in § 966.323(a)(2)(iii) of the handling regulation. Previously, that section required that only “6 x 7,” “6 x 6,” or “5 x 6” be used to indicate the respective size designation on

containers of tomatoes. The committee recommended that shipments of 6 x 6-sized producer field-packed tomatoes be marked as “6 x 6 and larger” to more accurately reflect the contents of the container which could include 5 x 6-sized tomatoes. The words “and larger” are not required on 5 x 6-sized field-packed tomatoes because that is the largest designated size defined by a minimum diameter and includes all sizes above the minimum.

In evaluating alternatives to this change, such as increasing the percentage tolerance for oversize, it was concluded that the changes provided in the amended interim final rule are the better and more effective way to accomplish the committee’s goal. Containers will be marked “6 x 6 and larger” which will separate them from the standard 6 x 6 and will tell buyers that the package includes some larger tomatoes. And, as stated earlier, while this does provide for additional larger tomatoes to be packed in a 6 x 6 pack, it should not blur the distinction between a 6 x 6 and 5 x 6.

The committee continues to focus on ways to be competitive, develop new markets, and increase grower returns. The committee believes these changes will continue to provide the industry with more flexibility and additional marketing opportunities.

The committee continues to believe 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 continues to believe 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 continues to believe that the higher prices combined with additional tomato sales should continue to increase returns to producers.

Other changes are continued by this rule. 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 discussions, 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 continues to make this change. Also, the deletion of unnecessary language in the first sentence of § 966.323(d)(1) continues in effect.

In addition, a minor change is being made in § 966.140 of the order’s rules and regulations. The change removes the reference to the form number (FV-418) for the transfer clearance receipt. This form may accompany truck shipments of tomatoes, in place of an inspection certificate. This is a Florida State form, not a Committee form, used in verifying that the load of tomatoes had been previously inspected and certified. The form now has a different number from that referenced in § 966.140 and the number could change again without the committee’s knowledge. Thus, the reference to the form number is being removed.

Section 8e 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 regulation as a result of this action.

#### **Final Regulatory Flexibility Analysis**

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 final 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 include 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, the average annual f.o.b. price for fresh Florida tomatoes during the 1998–99 season was around \$7.40 per 25-pound carton or equivalent, and total fresh shipments for the 1998–99 season were 56,706,685 25-pound equivalent cartons of tomatoes. Based on this information, the shipment information for the 1998–99 season, and the 1998–99 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 continues to define a producer field-packed tomato and provide exemptions for such tomatoes from the net weight requirements and the requirements that tomatoes be packed at a registered handler's facilities. This rule continues to allow for the place packing of ripe tomatoes in the field. Vine ripe tomatoes represent only about 15.5 percent of total fresh shipments (8,791,389 of 56,706,685 25-pound containers shipped during the 1998–99 season).

In addition, this rule continues to exempt shipments of field-packed tomatoes designated as size 6 x 6 from a maximum diameter requirement of  $2^{27/32}$  inches specified in § 966.323(a)(2)(i). This rule continues to make a related change in the labeling requirement specified in § 966.323(a)(2)(iii) whereby shipments of 6 x 6-sized producer field-packed tomatoes must be marked as "6 x 6 and larger" to more accurately reflect the contents of the container. It also continues to clarify net weight labeling requirements. Authority for these changes also is provided in § 966.52 of the order.

The committee recommended these changes 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 continues to allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes. This action will continue to facilitate the movement of Florida

tomatoes and should continue to 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 continue to 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 will only be handled once, when it is picked and packed in the field. This exemption will continue to make it substantially easier to pack a tomato of higher color and maturity in the field.

The exemption from the net weight requirements will continue to allow 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, and this action continues that exemption.

Continuing to provide an exemption for field-packed tomatoes designated as size 6 x 6 from a maximum diameter requirement of  $2^{27/32}$  inches will allow handlers of field-packed tomatoes to successfully meet minimum size requirements. Currently, tomatoes (other than those field-packed by producers) designated as "6 x 6" must be a minimum of  $2^{17/32}$  inches in diameter and a maximum of  $2^{27/32}$  inches in diameter. Tomatoes that are run over a sizing belt in a packing house have little difficulty in meeting these requirements. However, producers packing tomatoes in the field must use hand-sizers. It is relatively easy to pick to a minimum size. However, it is much more difficult to pick tomatoes within a range of fractions of an inch. Presenting a packed lot of tomatoes for inspection, and having it fail is costly. The handler can either find an outlet other than the fresh market for the tomatoes or rework the lot so it passes inspection. In the case of field-packed tomatoes, reworking a lot is substantially more difficult. The tomatoes cannot be dumped then run across the machinery again to ensure that they meet inspection, but must be sorted through by hand. This is costly and time-consuming, and because the fruit is ripe, can cause additional bruising. This change will continue to allow for additional oversized tomatoes, without the lot failing for size, providing additional flexibility and reducing reworking costs.

This rule also continues to make a related change in the labeling requirement specified in § 966.323(a)(2)(iii) whereby shipments of 6 x 6-sized producer field-packed tomatoes must be marked as "6 x 6 and larger" to more accurately reflect the contents of the container. The clarification of container net weight labeling also is continued in effect. Authority for these changes is provided in § 966.52 of the order.

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. The vine-ripe tomato market has been expanding and it is a market where the Florida tomato industry has room to grow and expand its market share. The committee continues to believe that producer field-packed tomatoes will continue to increase the volume of vine-ripe tomatoes available from Florida and 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 higher prices combined with additional tomato sales would continue to 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 as the market grows. 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 continue to 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.

Regarding alternatives to the recommended actions, the committee concluded that providing certain exemptions for shipments of field-packed tomatoes will allow the Florida tomato industry to meet a growing consumer demand for vine-ripe tomatoes. The exemptions from the net weight container requirement and the requirement that all tomatoes must be packed at registered handler facilities have been working well. In addition, the committee concluded that continuing to require 6 × 6-sized field-packed tomatoes to meet a maximum size requirement could discourage producers from packing such fruit because some of the packs would fail inspection. In evaluating alternatives to this change, such as increasing the percentage tolerance for oversize, it was concluded that the changes provided in the amended interim final rule were the better and more effective way to accomplish the committee's goal.

Containers are marked "6 × 6 and larger" which separates them from the standard 6 × 6 and tells buyers that the package includes some larger tomatoes. And, as stated earlier, while this does provide for additional larger tomatoes to be packed in a 6 × 6 pack, it does not blur the distinction between a 6 × 6 and 5 × 6. Thus, the changes regarding the field packing of 6 × 6 and larger tomatoes and marking the containers were determined to be the most viable course of action.

A minor change in § 966.140 of the order's rules and regulations is also being made to remove the reference to the form number for the transfer clearance receipt which accompanies truck shipments of tomatoes. This is a Florida State form, not a committee form. The form now has a different number from that referenced and the number could change again without the committee's knowledge. Removing the reference to the number will prevent this from happening. Further, a reference to the form number is not necessary.

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 meetings were widely publicized throughout the tomato industry and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the September 11, 1998, and May 23, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.

The interim final rule and an amended interim final rule concerning this action were published in the **Federal Register** on October 13, 1998 (63 FR 54556), and August 20, 1999 (64 FR 45409), respectively. Copies of the rules were mailed by the committee's staff to all committee members and tomato handlers. In addition, the rules were made available through the Internet by the Office of the Federal Register. Both rules provided for a 60-day comment period which ended December 14, 1998, and October 19, 1999, respectively.

Three comments to the interim final rule were received supporting the rule, and two comments to the amended

interim final rule were received, also in support of the rule. In addition, an E-mail expressing a concern about cleanliness was received by the Department prior to publication of the October 1998 rule. The Department considered this in this rulemaking action.

In summary, the three commenters supporting the committee's September 1998 recommendation and the two commenters supporting the August 1999 amendment commented on the increasing demand for field-packed tomatoes. Three of the commenters stated that consumers prefer a full, red ripe tomato, and that tomatoes with color are the fastest growing segment of all types of fresh tomatoes offered for sale at the retail level.

Another commenter mentioned that growers are benefiting from the rule because, prior to the October 1998 action, field-packed tomatoes could only be sold within the regulated area and most were not inspected. According to the commenter, market gluts of poor quality field-packed tomatoes were common in the regulated area and prices were low. Since October 1998, the quality of field-packed tomatoes has greatly improved because such tomatoes can be shipped outside the regulated area, provided they meet all of the order's requirements except for net weight. Even failed lots of field-packed tomatoes shipped within the regulated area are returning higher prices because of improved quality and increased demand.

Lastly, with regard to the issue of cleanliness and food safety as expressed in the E-mail, although vine-ripe tomatoes are place-packed in the field, final preparation includes inspection and certification by Federal-State Inspection Service fresh products inspectors to assure that the tomatoes meet the minimum grade and size requirements implemented under the order. One of the quality factors against which tomatoes are scored is cleanliness. The tomatoes must be clean. According to the U.S. tomato standards, the term "clean" means that the tomato is practically free from dirt or other foreign material. Further, applicable Federal, State, or local food and sanitary laws and regulations would be applicable to the extent appropriate.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address for the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, the comments received in response to the October 1998 and August 1999 interim final rules, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 54556, October 13, 1998) and the amended interim final rule, with a change, as published in the **Federal Register** (64 FR 45409, August 29, 1999) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

#### 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.

Accordingly, the interim final rule which was published at 63 FR 54556 on October 13, 1998, and the amended interim final rule amending 7 CFR part 966 which was published at 64 FR 45409 on August 20, 1999, are adopted as a final rule with the following change:

2. In § 966.140, the words “(Form FV-418)” are removed.

Dated: February 14, 2000.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-3875 Filed 2-17-00; 8:45 am]

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#### FEDERAL HOUSING FINANCE BOARD

##### 12 CFR Chapter IX

[No. 2000-02]

RIN 3069-AA87

#### Reorganization of Federal Housing Finance Board Regulations

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is reorganizing and renumbering its regulations, deleting obsolete regulations and amending the renumbered regulations to achieve greater consistency in terminology and greater conformity with current stylistic conventions of the Code of Federal Regulations. The rule will

implement a more logical and efficient presentation of the regulations governing the Federal Home Loan Banks (Banks) and the Federal Home Loan Bank System (Bank System), in anticipation of the incorporation of new and amended regulations to implement the Federal Home Loan Bank Modernization Act of 1999.

**EFFECTIVE DATE:** This final rule is effective on February 18, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Deborah F. Silberman, General Counsel, (202) 408-2570; or Eric Raudenbush, Senior Attorney-Advisor, (202) 408-2932, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Comparison of Proposed and Final Rules

On September 27, 1999, the Finance Board published a proposed rule to reorganize and renumber the agency's existing regulations, delete obsolete regulations and make certain technical amendments to the renumbered regulations. See 64 FR 52148 (Sept. 27, 1999). The amendments set forth in the proposed rule were intended to implement a more logical and efficient presentation of the rules governing the Banks and Bank System, as well as to achieve greater consistency in terminology and greater conformity with current stylistic conventions of the Code of Federal Regulations. The proposed rule was published with a 90-day comment period that ended on December 27, 1999. The Finance Board received no comment letters.

Simultaneously with the proposed reorganization rule, the Finance Board published its proposed Financial Management and Mission Achievement (FMMA) rule, under which extensive substantive additions and amendments to the Finance Board's regulations were proposed. See 64 FR 52163 (Sept. 27, 1999). The proposed reorganization rule, although itself making primarily only technical and organizational changes to the existing regulations, was developed with the assumption that it would be finalized concurrently with the FMMA rule. As such, it was expected that, when the reorganization rule was finalized: (1) The finalized FMMA provisions would be contained within the new organizational framework; and (2) outmoded existing regulations would be either deleted, or updated through amendments contained in FMMA to fit logically within the new framework.

However, on November 17, 1999, in response to the recent enactment of the

Federal Home Loan Bank System Modernization Act of 1999<sup>1</sup> (Modernization Act), Public Law 106-102, Title VI (1999), the Finance Board withdrew the proposed FMMA rule. See 64 FR 66115 (Nov. 24, 1999). Although the Finance Board expects in the coming year to promulgate separately modified versions of many of the regulations proposed in the FMMA rule, these new regulations and substantive amendments to existing regulations are not being finalized concurrently with this final reorganization rule as was originally anticipated. As a result, in this final rule, it is necessary for the Finance Board to carry over certain existing regulations that would have been superceded by FMMA—most notably on investments and deposits—until the agency promulgates new regulations to govern these Bank activities. Although these largely outmoded regulations do not fit perfectly within the regulatory structure contemplated by the reorganization, they have been placed in the most logical parts of 12 CFR chapter IX pending their anticipated deletion later in 2000. For areas in which the FMMA rule would have created new regulations, and in which the Finance Board still intends to promulgate new regulations (e.g., capital requirements and regulations governing member mortgage assets), appropriate part numbers have been reserved in order to make clear where these regulations will fit into the organizational structure of chapter IX as they are adopted.

Since the publication of the proposed reorganization rule, the Finance Board has promulgated two final rules, see 64 FR 55125 (Oct. 12, 1999) (allocation of joint and several liability on consolidated obligations among the Banks); 64 FR 61016 (Nov. 9, 1999) (availability of unpublished information), and one interim final rule, see 64 FR 71275 (Dec. 21, 1999) (devolution of corporate governance authorities as required by the Modernization Act) that affected text in the Code of Federal Regulations (CFR). The final reorganization rule accounts for these CFR text changes and places new material logically within the organizational structure.

Finally, although the overall structure of the regulations under the final rule will be identical to that which was proposed, certain part numbers appear differently in the final rule. In renumbering the parts, the Finance Board has attempted to group together topics within each subchapter and to

<sup>1</sup> The Modernization Act is Title VI of the larger Gramm-Leach-Bliley Act. Pub. L. 106-102 (1999).