

# Rules and Regulations

Federal Register

Vol. 70, No. 174

Friday, September 9, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV05-966-1 FR]

#### Tomatoes Grown in Florida; Revisions in Requirements for Certificates of Privilege

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Certificate of Privilege (COP) requirements currently 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 requires those interested in receiving Florida tomatoes shipped under a COP to apply to the Committee to become an approved receiver. This rule also clarifies the definitions for processing and pickling as used in the rules and regulations under the order. These changes will assist the Committee in assuring that COP tomatoes are disposed of into COP outlets.

**EFFECTIVE DATE:** This final rule becomes effective September 10, 2005.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375; Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938.

Small businesses may request information on complying with this

regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This final 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 USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the COP requirements currently prescribed under the order. This rule requires all parties interested in receiving Florida tomatoes shipped under a COP to apply to the Committee to become an approved receiver. This change will assist the Committee in preventing tomatoes shipped under a COP from entering

unauthorized outlets. This rule also clarifies the definitions for processing and pickling as used in the rules and regulations under the order. The Committee unanimously recommended these changes at a meeting held on September 9, 2004.

Section 966.54 of the order provides authority for the modification, suspension, and termination of regulations to facilitate the handling of tomatoes for special purposes such as export, charity, processing, or other purposes as specified by the Committee and approved by USDA. Section 966.56 of the order provides authority for the application of adequate safeguards to prevent tomatoes handled pursuant to § 966.54 from entering channels of trade for other than the specified purpose or purposes. Sections 966.120-123 of the order's rules and regulations specify the provisions required under a COP to allow tomatoes for pickling, processing, charity, relief, export, or experimental purposes to be shipped free from certain order requirements. The COP procedures include safeguards to ensure that the tomatoes are shipped for these purposes. The safeguards are also highlighted in § 966.323(c). Section 966.323(g) specifies the definition of processing.

This final rule adds § 966.124 to the order's rules and regulations. This section requires that handlers only ship tomatoes under a COP to receivers approved by the Committee and outlines the receiver application procedures. Section 966.323(c) is also modified to reflect the new COP requirements.

The COP provisions allow tomatoes for pickling, processing, charity, relief, export, or experimental purposes to be shipped free from certain order requirements. Consequently, it is important that adequate safeguards exist to assure that such tomatoes are disposed of properly. For example, the Committee noted that tomatoes shipped during the 2003-04 season under a COP for processing were being shipped into the domestic fresh market and not for the intended COP purpose.

The volume of tomatoes shipped for processing under COPs is significant enough to negatively impact the market for fresh tomatoes if these tomatoes are utilized in markets other than those specified in the COP. Last season, nearly 500,000 25-pound equivalent units of

Florida tomatoes were shipped under COPs. Consequently, the Committee agreed that additional steps need to be taken to ensure that tomatoes shipped under a COP are only utilized for the purposes specified.

Last season, when the issue with COP tomatoes surfaced, the Committee staff looked for ways to address the problem. Using the current safeguard procedures, those handlers who had shipped to receivers that had used tomatoes shipped under a COP for purposes different than specified had their COPs canceled. Some handlers noted that they had shipped the tomatoes to their receiver in good faith, and that the receiver was responsible for the problem. Further, because the handlers had used COPs to ship to more than one receiver, those handlers affected were no longer able to take advantage of the exemptions provided under the COP provisions.

Considering this, the Committee believes one way to help ensure that tomatoes shipped under a COP are not being misused is to provide for safeguards on receivers. To address the situation, the Committee recommended that all receivers interested in receiving tomatoes shipped under a COP be required to apply to the Committee to become an approved receiver. In addition, handlers are only able to ship under a COP to those approved receivers.

Should a receiver utilize the tomatoes for purposes other than specified under the COP, their status as an approved receiver with the Committee will be rescinded. As a result, such a receiver will no longer be eligible to receive tomatoes from any handler under a COP, but will only be able to receive tomatoes meeting the existing grade and size requirements under the order.

Under the provisions added by this rule, anyone interested in receiving tomatoes under a COP will have to file an application with the Committee for review and approval. This includes persons acquiring tomatoes for processing or pickling, as well as tomatoes acquired for relief or charity, for export, for experimental purposes, or for other purposes specified by the Committee. This application includes the name, address, telephone number, and e-mail address of applicant (receiver), the purpose for which the COP tomatoes will be used, physical address where the stated privilege purpose will be accomplished, an indication of whether or not the receiver packs, repacks, or sells fresh tomatoes, a statement that the tomatoes obtained will only be used for the purposes stated in the COP, a statement agreeing to

undergo random inspections by the Committee, and an agreement to submit reports as required. The Committee believes that this additional information will be valuable in helping to verify legitimate receivers.

The Committee staff will use the information in the application to investigate and approve receivers wanting to receive tomatoes under COPs. The approved receivers and the tomatoes shipped under the COP provisions will be monitored throughout the year. If during the season an approved receiver is found to be handling tomatoes in ways other than specified under the COP, that receiver's approval will be rescinded. The Committee believes this change will help better assure that COP tomatoes are shipped into the intended COP outlets. Moreover, handlers who may have shipped to non-compliant receivers will still be able to ship to other approved COP receivers.

This rule also amends the definition for processing contained in § 966.323 and adds a definition for pickling. Over the past few years, there have been an increasing number of questions surrounding what constitutes a fresh product and what constitutes processing. To help reduce any confusion and to ensure uniformity, the Committee believes it is important to make the definitions for processing and pickling in the order's rules and regulations as clear as possible.

Currently, processing is defined as 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. This rule amends this definition to specify further that all processing procedures must result in a product that does not require refrigeration until opened.

In addition to the changes to the definition for processing, a specific definition for pickling is also added. Pickling is defined as tomatoes preserved in a brine or vinegar solution. These clarifications should lessen the chance of confusion between handlers and purchasers regarding tomatoes covered under a COP.

The Committee believes this rule will strengthen the existing safeguard provisions and will help deter the use of Florida COP tomatoes for unauthorized purposes. By requiring persons who wish to receive tomatoes under COPs to apply to the Committee to become approved receivers, the Committee has additional information regarding receivers and the ability to rescind their approved receiver status, if

necessary. The Committee also believes enhancing the definitions for processed and pickled tomatoes helps further clarify the appropriate uses of tomatoes shipped under a COP. Therefore, the Committee voted unanimously to make these changes.

#### **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 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 100 producers of tomatoes in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000 (13 CFR 121.201). Currently, there are about 20 receivers who obtain tomatoes under COPs.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2003–04 season was approximately \$8.04 per 25-pound container, and fresh shipments for the 2003–04 season totaled 57,989,624 25-pound cartons of tomatoes. Committee data indicates approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida tomato handlers may be classified as small entities. It is believed that the majority of Florida tomato receivers and producers may be classified as small entities.

This final rule revises the COP requirements currently prescribed under the order. This rule requires those interested in receiving Florida tomatoes shipped under a COP to apply to the Committee to become an approved receiver. This change will assist the

Committee in assuring that tomatoes shipped under COPs are used for the intended COP purposes. This rule also clarifies the definitions for processing and pickling as used in the rules and regulations under the order. These clarifications will help reduce confusion between handlers and purchasers of tomatoes covered under a COP. The Committee unanimously recommended these changes at a meeting held on September 9, 2004. This rule adds § 966.124 to the rules and regulations, amends the safeguard provisions specified in § 966.323(c), and revises the definitions specified in § 966.323(g). Authority for these actions is provided for in §§ 966.54 and 966.56 of the order.

These changes are not expected to result in any increased costs for growers, handlers, or receivers who comply with COP requirements. The Committee recommended these changes to improve compliance with the provisions established under COPs. Because nearly 99 percent of Florida tomato shipments are utilized in the domestic fresh market, it is important to assure that tomatoes shipped under COPs are disposed of properly. Adequate safeguards are needed for this purpose.

This action will have a beneficial impact on producers, handlers, and receivers in that it will continue to allow approved receivers to obtain COP tomatoes. Handlers shipping to approved COP receivers also benefit because the non-compliant receivers will be removed from the Committee's approved receiver list and the handler can continue to take advantage of the exemptions by shipping to other approved COP receivers. Clarifying the definitions of processing and pickling also helps alleviate some of the questions and any confusion concerning what constitutes these procedures. 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.

However, requiring receivers to register with the Committee imposes an additional reporting burden on both small and large receivers. Requiring receivers to apply annually will increase the annual burden by five minutes per receiver, for a total burden of 1.67 hours (5 minutes per response  $\times$  1 response per receiver  $\times$  20 receivers). Although this action places an additional burden on receivers of Florida COP tomatoes, the benefits of having the additional information regarding receivers outweigh the increase in reporting burden.

The Committee discussed alternatives to this action. One alternative

considered was to further restrict handlers when shipping tomatoes under a COP. The Committee recognized that some industry members have developed markets for these tomatoes, which would otherwise be discarded. Therefore, the Committee voted to make the changes in this rule rather than further restricting this outlet. Another alternative considered was to only require processors and picklers to apply to the Committee. However, the Committee believed that the application process should be applicable to all parties receiving tomatoes under a COP. Consequently, this alternative was rejected.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, 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 9, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 27, 2005 (70 FR 30647). Copies of the rule were mailed or sent via facsimile to all Committee members and tomato handlers. Finally, the rule was made available through the Internet by the Office of the **Federal Register**. A 60-day comment period ending July 26, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <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 in the **FOR FURTHER INFORMATION CONTACT** section.

As mentioned previously, this action requires an additional collection of information. These information collection requirements are discussed in the following section.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements that are contained in this

rule were approved by the Office of Management and Budget (OMB), under OMB No. 0581-0231. The information collection has been merged into OMB No. 0581-0178, Vegetable and Specialty Crops Marketing Orders, which expires October 31, 2007.

In summary, this final rule establishes reporting requirements authorized under the Florida tomato order. Information would be reported on form number FTC-111. These additional reporting requirements will enable the Committee to collect information from persons wishing to receive Florida tomatoes exempt from certain order requirements under a COP. The Committee will evaluate this information and determine whether an entity is qualified to receive COP tomatoes. This form will help ensure compliance with the regulations and assist the Committee and USDA with oversight and planning. The estimated burden due to this form required of each entity annually is 5 minutes per person, with a total increased burden estimated at 1.67 hours.

#### **Government Paperwork Elimination Act Compliance**

The Agricultural Marketing Service (AMS) is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the final rule should be effective by the start of the 2005-06 season, which begins October 10, 2005. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule. No comments were received.

#### **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. In part 966, a new § 966.124 is added to read as follows:

**§ 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.

(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.

■ 3. In § 966.323, a new paragraph (5) is added to paragraph (c), and paragraph (g) is amended by revising the definitions of *Processing* and *U.S. tomato Standards*, and by adding a

definition for *Pickling* to read as follows:

**§ 966.323 Handling regulations.**

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

(g) \* \* \* *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.

Dated: September 2, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–17860 Filed 9–8–05; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2005–22309; Directorate Identifier 2005–NM–159–AD; Amendment 39–14254; AD 2005–18–14]

**RIN 2120–AA64**

**Airworthiness Directives; Avions Marcel Dassault-Breguet Model Falcon 10 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) that applies to all Dassault Model Falcon 10 series airplanes. The existing AD currently requires revising the airplane flight manual (AFM) and installing a placard in the flight deck to

prohibit flight into known or forecasted icing conditions. In lieu of the AFM revision and placard installation, that AD allows identifying the part number of each flexible hose in the wing (slat) anti-icing system, performing repetitive inspections of each hose for delamination, and performing corrective actions if necessary. This AD adds the following actions (also in lieu of the AFM revision and placard installation): New repetitive inspections for delamination at reduced intervals, corrective actions if necessary, and an additional AFM revision to include a statement to track flight cycles when the slat anti-icing system is activated. This AD also provides an option to repetitively replace the existing flexible hoses with improved flexible hoses, which terminates the repetitive inspection requirements. This AD results from a report of in-service delamination of a flexible hose in the slat anti-icing system at a time earlier than previously reported. We are issuing this AD to prevent collapse of the flexible hoses in the slat anti-icing system, which could lead to insufficient anti-icing capability and, if icing is encountered in this situation, could result in reduced controllability of the airplane.

**DATES:** This AD becomes effective September 26, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 26, 2005.

On April 26, 2005 (70 FR 18282, April 11, 2005), the Director of the Federal Register approved the incorporation by reference of Dassault Alert Service Bulletin F10–A312, dated February 25, 2005, including the Service Bulletins Compliance Card.

We must receive any comments on this AD by November 8, 2005.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

- Fax: (202) 493–2251.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,