

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Ohio.....	Cuyahoga.....	Gates Mills, Village of	H 39 035 2860 01..	Ohio Dept. of Natural Resources, Ohio Departments Bldg., Columbus, Ohio 43215. Ohio Insurance Department, 115 East Rich St., Columbus, Ohio 43215.	Office of the Service Director Town Hall, Chagrin River Road, Gates Mills, Ohio 44040.	Do.
Do.....	Huron.....	Wakeman, Village of	H 39 077 8490 01..	do.....	Mayor, Municipal Bldg., Wakeman, Ohio 44880.	Do.
Do.....	Lucas.....	Ottawa Hills, Village of	H 39 005 6270 01..	do.....	Mayor, Village of Ottawa Hills, Ottawa Hills, Ohio 43006.	Do.
Do.....	Columbiana.....	Washingtonville, Village of	H 39 009 8580 01..	do.....	Mayor, Washingtonville Village, Washingtonville, Ohio 44490.	Do.
Do.....	Richland.....	Shelby, City of	H 39 139 7500 01..	do.....	Mayor, City Bldg., Shelby, Ohio 44873.	Do.
Do.....	Tuscarawas.....	Uhrichsville, City of	H 39 139 7500 02 H 39 157 8210 01..	do.....	Mayor, 219½ North Main St., Uhrichsville, Ohio 44683.	Do.
Do.....	Warren.....	Waynesville, Village of	H 39 157 8210 01..	do.....	Mayor, Waynesville, Ohio 45068.	Do.
Oregon.....	Clackamas.....	Estacada, Town of	H 41 0050650 01..	Executive Department, State of Oregon, Salem, Ore. 97310. Oregon Insurance Division, Department of Commerce, 158 12th St., N.E., Salem, Ore. 97310.	Mayor, City Hall, Estacada, Ore. 97023.	Do.
Do.....	Tillamook.....	Nehalem, City of	H 41 057 1480 01..	do.....	Office of the Recorder, City of Nehalem, Box 143, Nehalem, Ore. 97131.	Do.
Do.....	Umatilla.....	Stanfield, City of	H 41 059 1970 01..	do.....	Mayor, City Hall, 120 S.E. Harding, Stanfield, Ore. 97875.	Do.
Do.....	do.....	Umatilla, City of	H 41 059 2120 01..	do.....	Mayor, City Hall, 240 Monroe, Umatilla, Ore. 97882.	Do.
Pennsylvania.....	Berks.....	Douglass, Township of	H 42 011 2024 01..	Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Douglass Township Municipal Bldg., Douglas Drive, R.D. No. 2, Boyertown, Pa. 19512.	Do.
Do.....	do.....	Lower Alsace, Township of	H 42 011 4617 01..	do.....	Lower Alsace Township Bldg., 25th and Harvey Sts., Peenside, Reading, Pa. 19606.	Do.
Do.....	do.....	Shillington, Borough of	H 42 011 4617 02. H 42 011 7640 01..	do.....	Town Hall, Philadelphia and Lancaster Ave., Shillington, Pa. 19607.	Do.
Do.....	do.....	West Reading, Borough of	H 42 011 9230 01..	do.....	West Reading Borough Hall, 5000 Chestnut St., West Reading, Pa. 19602.	Do.
Do.....	Dauphin.....	Dauphin, Borough of	H 42 043 1910 01..	do.....	Fire Hall, Borough of Dauphin, Dauphin, Pa. 17018.	Do.
Do.....	Indiana.....	Homer City, Borough of	H 42 063 3080 01..	do.....	Homer City Borough Office, Fireman's Hall, Homer City, Pa. 15748.	Do.
Do.....	Lebanon.....	Annaville, Township of	H 42 075 0174 1..	do.....	Lebanon County-City Planning Department, Room No. 3, Municipal Bldg., 400 South Eighth St., Lebanon, Pa. 17042.	Do.
Do.....	do.....	South Annville, Township of	H 42 075 7834 01..	do.....	do.....	Do.
Texas.....	Comal.....	Unincorporated Areas	H 42 075 7834 05. H 48 001 0000 02 H 48 001 0000 14	Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, Tex. 78701.	Road Administrator, Comal County, Room 309 County Courthouse, New Braunfels, Tex. 78130.	Do.
Wisconsin.....	Waupaca and Autaugamie	New London, City of	H 55 087 3390 01..	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	City Clerk's Office, City of New London, New London, Wis. 54961.	Do.
Do.....	Waukesha.....	Brookfield, City of	H 55 133 0708 01..	do.....	Brookfield City Hall, 2000 North Calhoun Rd., Brookfield, Wis. 53005.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued: October 25, 1973.

GEORGE K. BERNSTEIN,  
Federal Insurance Administrator.

[FR Doc.73-23379 Filed 11-2-73; 8:45 am]

[Docket No. R-73-109]

**PART 1932—PROTECTIVE DEVICE REQUIREMENTS**

**PART 1933—COVERAGES, RATES, AND PRESCRIBED POLICY FORMS**

**Date of Commencement of Coverage Under Commercial Crime Insurance Policies**

The Department of Housing and Urban Development published on July 23, 1973, at 38 FR 19686, regulations with respect to the Federal Crime Insurance

Program. These regulations provided for pre-inspection of non-residential properties for which crime insurance is sought. Under the authority contained in section 306(g), 82 Stat. 540; 12 U.S.C. § 1721, an amendment is now being published to provide coverage during the period between application and pre-inspection of property found to be protected by the required protective devices.

Because this amendment clarifies the existing pre-inspection regulations and

provides coverage in cases in which it would not otherwise exist, comment and public procedure are unnecessary and contrary to the public interest. Inasmuch as this amendment provides a benefit to applicants for Federal commercial crime insurance policies, this amendment is also being made effective upon publication in the FEDERAL REGISTER.

Accordingly, 24 CFR, Parts 1932 and 1933 are amended as follows:

1. Section 1932.3a is amended to read:



### § 1932.3a Mandatory pre-inspection of commercial properties.

(b) Coverage under a commercial crime insurance policy indemnifying burglary losses shall not commence unless it is determined that the premises sought to be insured complies with all applicable protective device requirements.

2. Section 1932.25a is amended to read:

### § 1932.25a Application and date of commencement of coverage.

Application for Federal commercial crime insurance shall be made only on a form approved by the Administrator. When a property is found by pre-inspection to comply with the applicable protective device requirements, coverage on that property under a policy covering burglary losses will commence at noon on the day following the date of the application unless a later date is specified in the application. Coverage under a policy covering robbery only will commence at noon on the day following the date of the application unless a later date is specified in the application.

**Effective date.** This amendment shall be effective upon November 5, 1973.

GEORGE K. BERNSTEIN,  
Federal Insurance Administrator.

[FR Doc.73-23470 Filed 11-2-73;8:45 am]

## Title 6—Economic Stabilization CHAPTER I—COST OF LIVING COUNCIL

[Phase IV Price Ruling 1973-3]

### APPENDIX—PHASE IV PRICE RULINGS Community Antenna Television

**Facts.** X, a corporation, provides community antenna television (CATV) service to persons located within Y city limits. X obtained authority to furnish CATV service within the city limits when the Y city council enacted an ordinance providing X with the franchise to render CATV service within the city limits. Statutory and case law of the state Z, where Y city is situated, did not confer on the city council jurisdiction to regulate rates charged by X but X did agree to submit to the city council's regulatory authority as a condition of doing business. Furthermore, Z's public utility commission does not regulate X's activities.

**Issue.** Is X considered a public utility for Economic Stabilization purposes?

**Ruling.** X is considered a public utility for purposes of the Phase IV price control program. Rates for CATV services provided by X are exempt under 6 CFR 150.56. This ruling is based on the definition of "public utility" appearing in 6 CFR 150.31, which is substantially the same as the Phase II definition of "public utility", (6 CFR 300.302), and the reasoning of Price Commission Ruling 1972-279 (37 FR 24418, Nov. 17, 1972). That ruling was based on facts identical to those stated in this ruling. The rationale of that ruling is set forth below:

X is considered a public utility for Economic Stabilization purposes. Economic Stabilization Regulation, 6 CFR 300.16 (1972) defined a public utility to mean, "a person that furnishes utility services to the public \* \* \*". The same section defined "utility service" to mean, "any commodity or service affected with a public interest \* \* \*". United States v. Southwestern Cable Co., 392 U.S. 157 (1968), the Supreme Court held CATV is subject to the regulatory authority of the Federal Communications Commission since CATV provides a public service affected with a public interest.

Regulation § 300.16 was superseded on September 16, 1972, by Economic Stabilization Regulation § 300.30-311, 37 FR 18893 (1972). The new definition of public utility in § 300.302 is expansive in nature. Section 300.302 defines a public utility to mean, "a person that furnishes service to the public \* \* \*". X furnishes a service to the public.

Furthermore, the general operation of CATV resembles a public utility operation. X must attract large quantities of capital for construction of its communication facilities. The prices charged by CATV for its service must be sufficient to provide an adequate rate of return in order to attract the necessary capital. Therefore, price increases by CATV could not be reconciled with Price Commission regulations applicable to service organizations, since service organizations may only raise prices above base price to reflect incurred allowable costs, not to insure an adequate rate of return.

Regulation § 300.302 lists "telephone, and telegraph \* \* \* service" as examples of public utility activities. CATV closely resembles the operation of a telephone or telegraph company in that its cables often parallel the same routes used by telephone and telegraph wire. In addition, the CATV service area is restricted and CATV functions in a non-competitive atmosphere. (See PC Ruling 1972-85, 37 FR 4371 (1972).)

Therefore, under both sets of regulations, CATV is considered a public utility. CATV cannot be considered a service organization since Economic Stabilization Regulation, 6 CFR § 300.14 (1972) excludes public utilities from the definition of a service organization.

OCTOBER 31, 1973.

WILLIAM N. WALKER,  
General Counsel,  
Cost of Living Council.

[FR Doc.73-23549 Filed 11-1-73;2:11 pm]

[Phase IV Price Ruling 1973-4]

### APPENDIX—PHASE IV PRICE RULINGS Price Increases Required by State Law

**Facts.** Firm A is a price category III firm wholly engaged in retailing activities in State B. Firm A operates drug stores which, among other things, sell liquor for consumption off the premises. Firm A has elected pursuant to 6 CFR 150.310 to group all of its retail products in a single merchandise category and has elected to be controlled on the basis of gross margin. Since the advent of Phase IV, firm A has maintained prices at or below adjusted freeze prices. The authority in state B with jurisdiction over liquor prices has directed that the minimum price of liquor at retail be increased 10 cents per gallon to reflect a dollar-for-dollar increase in liquor taxes. Firm A's annual revenue increase from such a price increase would be \$20,000. If firm A raises prices for liquor

pursuant to the state B directive it will become subject to the requirement under 6 CFR 150.304 that prices within its merchandise category be controlled so that the gross margin realized for the category during any fiscal quarter does not exceed the higher of the gross margin realized for the category during the corresponding fiscal quarter of the pricing base period or the gross margin realized for the category for the pricing base period. In order to comply with this requirement, firm A would have to make price reductions sufficient to reduce its annual revenues by \$500,000.

**Issue.** Must firm A increase its prices pursuant to state B's directive?

**Ruling.** Firm A is not required to implement the price increases directed by state B. Article VI of the U.S. Constitution (the "Supremacy Clause") and court decisions thereunder subordinate state statutes to conflicting federal statutes. The Economic Stabilization Regulations promulgated by the Cost of Living Council under the authority of Executive Orders 11695 and 11730, which in turn were issued under authority of the Economic Stabilization Act of 1970, as amended, prevail over any state directive with which they may conflict. State B's directive is in conflict with the Council's regulations since the state-directed price increases would place firm A in violation of the Council's regulations and would take away from firm A the option provided to retailers to maintain prices at adjusted freeze price levels. Firm A would be required to make substantial price reductions in order to bring himself into compliance with the Council's regulations. Such a result was not contemplated by the Council's retail-wholesale regulations.

WILLIAM N. WALKER,  
General Counsel,  
Cost of Living Council.

OCTOBER 31, 1973.

[FR Doc.73-23612 Filed 11-2-73;10:51 am]

## Title 7—Agriculture

### CHAPTER I—AGRICULTURAL MARKETING SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

##### Duties and Responsibilities of Administrative Law Judges

On August 19, 1972, the Civil Service Commission published in the FEDERAL REGISTER (37 FR 16787) a rule changing the title of hearing examiner, as used in 5 CFR Part 930, Subpart B, to administrative law judge. By designation to the Office of Administrative Law Judges dated December 20, 1972 (37 FR 28475), as amended April 27, 1973 (38 FR 10795), the Secretary of Agriculture has provided for the issuance by the administrative law judges of initial decisions in adjudication proceedings subject to sections 556 and 557 of Title 5, United States Code, such decisions to become final without further proceedings unless there



is an appeal to the Secretary by a party to the proceeding in accordance with applicable rules of practice: *Provided, however*, That no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. To incorporate these and other technical changes in the Rules of Practice (7 CFR Part 47) under the Perishable Agricultural Commodities Act, 1930 (46 Stat. 531 et seq., as amended; 7 U.S.C. 499a et seq.), and pursuant to the authority contained in Section 15, 46 Stat. 537, as amended, 7 U.S.C. 499a, said Rules of Practice are hereby amended as follows:

1. Amend § 47.2 (i), (j), and (l) to read as follows:

§ 47.2 Definitions.

(i) (1) "Examiner": In connection with reparation proceedings, the term "examiner" is synonymous with "presiding officer" and means any attorney employed in the Office of the General Counsel of the Department.

(2) "Administrative Law Judge." In connection with disciplinary proceedings, the terms "Administrative Law Judge" or "Judge" mean any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105, assigned to conduct the proceeding.

(j) (1) "Examiner's report": In connection with reparation proceedings, "examiner's report" means the examiner's report to the Secretary, and includes the examiner's proposed (i) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefore, (ii) order and (iii) rulings on findings, conclusions and orders submitted by the parties.

(2) "Initial decision": In connection with disciplinary proceedings, "initial decision" or "decision" means the initial decision of an Administrative Law Judge, and includes the Administrative Law Judge's (i) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (ii) order and (iii) rulings on findings, conclusions and order submitted by the parties.

(l) "Hearing Clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

2. Amend § 47.5 to read as follows:

§ 47.5 Scope and applicability of rules of practice.

Sections 47.6 through 47.25 shall be applicable to the procedure governing the filing and disposition of formal complaints in reparation proceedings. Sections 47.26 through 47.43 shall be applicable to the procedure governing the filing and disposition of formal complaints and other moving papers instituting disciplinary proceedings. Sections 47.1 through 47.5 and § 47.46 shall be applicable to all proceedings under the regulations in this part.

3. Amend § 47.11(d) to read as follows:

§ 47.11 Examiners.

(d) Who may act in absence of examiner. In case of the absence, illness, resignation, or death of the examiner who has been assigned to a proceeding, or, in case the General Counsel determines that, for other good cause, such examiner should not act, the powers and duties to be performed by him under these rules of practice in connection with such proceeding may, subject to the provisions of paragraph (a) of this section, be assigned to another examiner.

§ 47.13 [Amended]

4. Amend § 47.13(a) (2) by substituting the word "Secretary" for the word "Administrator" in the two places in which it occurs.

5. Amend the first sentence of § 47.15 by deleting the words "the General Counsel or" from paragraph (c) and by amending paragraphs (f) (1) (i) and (h) to read as follows:

§ 47.15 Oral hearing before the examiner.

(f) Evidence—(1) In general. (i) The testimony of witnesses at a hearing shall be upon oath or affirmation, subject to cross-examination, and shall be reported verbatim.

(h) Transcript. The reporter recording the testimony at a hearing will deliver the original transcript, with exhibits thereto attached, to the examiner, who will retain such copy for the official file and for use in preparing his report. The reporter will also deliver to the examiner such other copy or copies as may be ordered by the Department, which copy or copies the examiner will forward to the hearing clerk. Parties to the proceeding, or others, who desire a copy of the transcript of the hearing may place orders at the hearing with the reporter, who will furnish and deliver such copies direct to the purchaser upon payment of the applicable rate per page.

§ 47.17 [Amended]

6. Amend the first sentence of § 47.17 (a) to read as follows: The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpoena, be required at any designated place of hearing or at any designated place for the taking of a deposition.

7. Amend § 47.19 to read as follows:

§ 47.19 Post-hearing procedure before the examiner.

(a) Certification of the transcript. As soon as practicable after receipt of the transcript, the examiner shall prepare his certificate stating that, to the best of his knowledge and belief, the transcript is a true, correct, and complete transcript of the testimony given at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits received in evidence at the hearing, with such ex-

ceptions as he shall specify. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be furnished to each of the parties and to the hearing clerk. The examiner shall correct the original copy of the transcript by adding or crossing out (but without obscuring the text) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the examiner.

(b) Proposed findings of fact, conclusions, and order. The examiner shall decide and shall announce at the hearing whether proposed findings of fact, conclusions, and order may be filed by the parties. If allowed by the examiner, he shall announce a definite calendar day as the time within which these documents may be filed. Such findings of fact, conclusions, and order shall be based solely upon the evidence of record. They may be accompanied by supporting briefs and by a statement of objections made to the rulings of the examiner at the hearing.

(c) Briefs. If the examiner does not allow proposed findings of fact, conclusions, and order to be filed, the parties shall be given until a definite calendar day to file briefs.

(e) The examiner's report. The examiner, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, and within a reasonable time after the termination of the periods allowed for the filing of the submissions of the parties allowed by this section, shall prepare, upon the basis of the evidence received at the hearing and with due consideration of submissions of the parties filed pursuant to this section, his report. Such report shall be filed with the hearing clerk and shall be prepared in the form of a final order for the signature of the Secretary, but shall not be served upon the parties, unless and until it shall have been signed by the Secretary, as hereinafter provided.

§§ 47.27, 47.31, 47.32, 47.33, 47.34, 47.36, 47.38, 47.43 [Amended]

8. Amend §§ 47.27(d), 47.29, 47.31(a) (2), 47.31(b), 47.32 (except 47.32(a) (2), 47.32(c) (3) (ii), 47.32(e) (8), and 47.32 (g)), 47.33, 47.34, 47.36, 47.38 (except 47.38(i)), and 47.43 as follows: (1) Wherever the term "examiner" appears, the term "judge" is substituted therefor; (2) wherever the term "examiners" appears, the term "judges" is substituted therefor; and (3) wherever the term "examiner's" appears, the term "judge's" is substituted therefor.

9. Amend § 47.26(b) to read as follows:

§ 47.26 Stipulations and consent orders.

(b) At any time after the issuance of the moving paper and prior to the hearing in any proceeding, the Secretary, in his discretion may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in



which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulations or agreement consenting to the order, the judge may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearing.

10. Amend § 47.30(c) to read as follows:

§ 47.30 The answer.

(c) *Procedure upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the moving papers shall constitute a waiver of hearing. Upon such admission of facts, complainant shall file in triplicate a proposed decision, along with a motion for the adoption thereof, which motion and proposed decision shall be served upon the respondent by the hearing clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the hearing clerk objections thereto. In not less than 30 days after service of complainant's motion and proposed decision, the judge shall issue a decision without further procedure or hearing. Absent a waiver by the parties of service of the judge's decision, it shall be served upon them by the hearing clerk. The parties shall be given an opportunity to file appeals to the decision, to file briefs in support of such appeals, and to make oral arguments thereon before the Secretary in accordance with § 47.39.

11. Amend § 47.31 to read as follows:

§ 47.31 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript.

(2) The judge shall rule upon all motions and requests filed or made prior to the issuance of the initial decision. The Secretary shall rule upon all motions and requests filed in connection with an appeal of the initial decision to the Secretary.

(b) *Certification to Secretary.* The submission or certification of any motion, request, objection, or other question to the Secretary prior to the issuance of an initial decision shall be in the discretion of the judge.

12. Amend § 47.32 as follows: Amend paragraphs (a) (2), (b), (c) (3) (ii), and (e) (1) (i) to read as set forth below. In paragraph (e) (8) substitute the terms "judge" or "judge's" wherever the terms "examiner" or "examiner's" appear, and insert the words "on appeal" after the word "if" in the last sentence. Delete paragraph (g). As amended, § 47.32 reads as set forth below:

§ 47.32 Oral hearing before examiner.

(a) \* \* \* (2) Waiver of oral hearing shall not be deemed to be a waiver of the

right to make oral argument before the Secretary upon appeal of the judge's initial decision.

(b) *Time and place.* If and when the proceeding has reached the state where oral hearing is to be held, the judge, upon motion of any of the parties, jointly or individually, stating that the matter is at issue and is ready for hearing, shall set a time and place for hearing giving careful consideration to the convenience of the parties, and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of the hearing becomes necessary it shall be made by the Judge and notice of such change shall be served upon the parties.

(c) \* \* \*

(3) \* \* \*

(i) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the judge's initial decision, to appeal therefrom to the Secretary, and to make oral argument before the Secretary with respect thereto.

(e) *Evidence.*—(1) *In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation, subject to cross-examination, and shall be reported verbatim.

(g) [Deleted]

§ 47.33 [Amended]

13. Amend § 47.33(b) by substituting the word "Secretary" for the word "Administrator" in the first sentence.

14. Amend § 47.37 to read as follows:

§ 47.37 Post-hearing procedure.

(a) *Corrections to and certification of transcript.*—(1) At such time as the judge may specify, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, the parties may file with the judge proposed corrections to the transcript.

(2) As soon as practicable after the filing of proposed findings of fact, conclusions and orders, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) *Proposed findings of fact, conclusions, orders, and briefs.* Each party may file with the hearing clerk proposed findings of fact, conclusions and orders, based solely upon the record, and on matters

subject to official notice, and a brief in support thereof. The judge shall announce at the hearing a definite calendar day as the time within which these documents may be filed.

(c) *Administrative law judge's initial decision.* The judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions and orders, and briefs in support thereof, shall prepare, upon the basis of the record and on matters officially noticed and shall file with the hearing clerk, his initial decision, a copy of which shall be served by the hearing clerk upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding pursuant to § 47.39(a); *Provided, however,* That no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal.

15. Amend § 47.38 by changing the designation of paragraph (j) to (k) and substituting "Judge's" for the word "examiner's" amending paragraph (i) and inserting a new paragraph (j) as follows:

§ 47.38 Shortened procedure.

(i) *Briefs and proposed findings of fact, conclusions, and orders.* Except as otherwise may be directed by the judge, the filing of complainant's statement in reply, or the expiration of the time for such filing, will conclude the presentation of evidence. Promptly after the conclusion of the presentation of evidence, the judge shall file with the hearing clerk a notice that the parties may have 10 days after the service of such notice by the hearing clerk within which to file briefs and proposed findings of fact, conclusions, and orders.

(j) *Administrative law judge's initial decision under the shortened procedure.* The procedure provided in § 47.37(c) shall apply to judge's initial decisions under the shortened procedure.

16. Amend § 47.39 to read as follows:

§ 47.39 Appeal to Secretary.

(a) *Filing of petition.* Any party who disagrees with a judge's decision, or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the hearing clerk within 30 days after service of said decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations and authorities being relied upon in support thereof. The appeal petition shall be served upon the other party to the proceeding by the hearing clerk.

(b) *Transmittal of record.* Whenever an appeal of an initial decision is filed and a response thereto has been filed or



the time for filing a response has expired, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: the pleadings; motions, and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions and orders, and briefs in support thereof, as may have been filed in connection with the hearings; the judge's initial decision; and the appeal petition; briefs in support thereof and responses thereto as may have been filed in the proceeding.

(c) *Response to appeal petition.* Within 20 days after the service of an appeal brought by a party to the proceeding, any other party may file with the hearing clerk a response in support of or in opposition to such appeal which shall be served upon the appellant.

17. Amend § 47.40 to read as follows:

§ 47.40 Argument before Secretary.

(a) *Oral argument.* A party bringing an appeal may request, within the prescribed time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse, or limit any request for oral argument on appeal.

(b) *Briefs.* The Secretary may allow or refuse to allow briefs to be filed, either in lieu of or in addition to oral argument.

(c) *Scope of argument.* Argument to be heard on appeal, whether oral or in a written brief, shall be limited to the issues raised in the appeal, except that if the Secretary determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

18. Amend § 47.41 to read as follows:

§ 47.41 Consideration of appeal by the Secretary and issuance of final order.

As soon as practicable after the receipt of the record from the hearing clerk, or, in case oral argument was had, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall rule on the appeal. If the Secretary decides that no change or modification of the judge's decision is warranted, he may adopt the judge's decision as the final order of the Secretary, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum.

(b) *Issuance of final order.* A final order issued by the Secretary shall be filed with the hearing clerk, who shall serve it forthwith upon the parties.

§ 47.46 [Amended]

19. Amend the first sentence of § 47.46 by changing the words "presiding officer" to read "judge".

*Effective date.* The foregoing amendments and revisions shall become effective on November 5, 1973.

(Sec. 15, 146 Stat. 537, as amended; 7 U.S.C. 499o.)

Done at Washington, D.C., this 30th day of October 1973.

CLAYTON YEUTTER,  
Assistant Secretary.

[FR Doc. 73-23462 Filed 11-2-73; 8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 965—TOMATOES GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Handling

This regulation, designed to promote orderly marketing of Saladette tomatoes grown in the Lower Rio Grande Valley in Texas requires that they be inspected and meet specified requirements in order to maintain high standards of quality of Saladette tomatoes shipped to consumers.

Notice of rulemaking with respect to a proposed handling regulation, to be made effective under Marketing Order No. 965 (7 CFR Part 965) regulating the handling of tomatoes grown in the Lower Rio Grande Valley in Texas, was published in the FEDERAL REGISTER October 10, 1973 (38 FR 27936). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The notice afforded interested persons an opportunity to file written data, views or arguments pertaining thereto not later than October 19, 1973.

An exception was filed by Smith & Wicker Tomato Co., Inc., McAllen, Texas, on behalf of three other tomato shippers and seven other growers objecting to paragraph (c)'s detailed specifications for the proposed 1/2 bushel (20 pound) container. They contend that limiting handlers to this one exact size and type of box would penalize small handlers and be contrary to the preference of many tomato receivers for some other container such as a different shaped 20 pound box with a regular lid. It is concluded that a box with these unique specifications might not be readily and economically available to all handlers by the effective date of this regulation and that other commercially acceptable containers may be equally suitable for delivering tomatoes to consumers in an attractive and protective manner. Therefore, the container type, material and strength requirements are hereby deleted.

The recommendations of the Texas Valley Tomato Committee reflects its appraisal of the 1973-74 crop of Salad-

ette tomatoes and the marketing prospects for this season and are consistent with the marketing policy it unanimously adopted. The grade, color, container and inspection requirements are intended to prevent the shipment of low quality Saladette tomatoes and the use of inadequate, dirty or deceptive containers.

After consideration of all relevant matters presented, including the proposal set forth in the notice which was recommended by the Texas Valley Tomato Committee, established under said marketing order, it is hereby found and determined that this handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that shipments of 1973-74 crop tomatoes grown in the production area have begun and the regulation should become effective at the time herein provided to maximize the benefits to producers. The Texas Valley Tomato Committee held an open meeting on September 4, 1973, to consider recommendations for a handling regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; and proposed requirements have been reduced so compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

The regulation is as follows:

§ 965.309 Handling regulation.

Except as otherwise provided in this section, beginning the effective date hereof through July 31, 1974, Saladette tomatoes shall not be handled unless they meet the requirements of paragraphs (a), (b), (c), (d), and (e) of this section, or are exempted by paragraphs (g) or (h).

(a) *Stem scars.* Stem scars shall not exceed 1/4 inch in diameter.

(b) *Minimum grade and color.* Saladette tomatoes shall grade 80 percent of U.S. No. 1 or better and at time of inspection shall have attained the color classification of "breaker" as defined in Section 51.1864 of the current U.S. Standards for Grades of Fresh Tomatoes.

(c) *Containers.* Saladette tomatoes shall be packed in one of three containers described below which should be commercially acceptable and provide adequate protection during shipment. These containers and their components shall be clean and bright in appearance without marks, stains or other evidence of previous use.



(1) Containers having a capacity of one pint;

(2) Containers having a capacity of one quart; or

(3) Containers having a capacity of approximately 20 pounds.

(d) *Pack.* Containers shall be fairly well filled and the net weight of the 20 pound container shall not exceed 23 pounds.

(e) *Inspection.* (1) Regulated tomatoes shall be inspected and certified as required by § 965.60; and (2) no handler shall transport or cause the transportation of any shipment of such tomatoes by motor vehicle unless each such shipment is accompanied by a copy of a valid inspection certificate applicable thereto.

(f) *Tolerances.* To allow for variations incident to proper grading, for any lot there shall be a tolerance of 5 percent by count, for tomatoes which fail to meet the stem scar or color requirements specified in paragraphs (a) and (b) of this section respectively. Also any individual container may have double the prescribed tolerance: *Provided*, That the averages for the entire lot are within the tolerances specified.

(g) *Minimum quantity.* For purposes of regulation under this part, each person subject thereto may handle, pursuant to § 965.53, up to, but not to exceed 69 pounds of Saladette tomatoes per day without regard to the requirements of this part, but this exception shall not apply to any portion of a shipment of over 69 pounds of tomatoes.

(h) *Special purpose shipments.* The requirements set forth in this section shall not be applicable to shipments of Saladette tomatoes for the following purposes: (1) Relief or charity; (2) processing; (3) for experimental projects; (4) livestock feed; and (5) export to Mexico.

(i) *Safeguards.* Each handler making shipments of Saladette tomatoes pursuant to paragraph (h) of this section for relief or charity, for processing, for experimental projects, for livestock feed or for export to Mexico shall apply for and obtain an approved Certificate of Privilege from the committee applicable to shipments for such purpose and on exports to Mexico handlers shall within 7 days after export file with the committee a copy of Shippers Export Declaration, U.S. Department of Commerce Form 7525-V, to verify export of each shipment. The Shippers Export Declaration shall not be required on exports through the ports of Brownsville, Progreso, Hidalgo, Los Ebanos, and Rio Grande City.

(j) *Definitions.* "Saladette" tomatoes means a variety of *Lycopersicon Solanaceae* that ranges from plum shaped to almost perfectly round, averages about two ounces in weight and generally has a quarter inch or less stem scar and a slightly elongated blossom end or tip. The fruit are red in color, have a tough shining peel, are thick walled and have 2 to 3 (primarily 3) locules completely filled with gel. When used herein, the terms "pint" and "quart" mean contain-

ers with respective capacities of 33.6 and 67.2 cubic inches; and other terms used in this section shall have the same meaning as when used in this part and the U.S. Standards for Grades of Fresh Tomatoes (§§ 51.1855-51.1877 of this title) and the new standards published in the September 5, 1973, *FEDERAL REGISTER* (38 F.R. 23931) which will supersede the former on December 1, 1973.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed November 1, 1973, to become effective November 5, 1973.

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## PART 966—TOMATOES GROWN IN FLORIDA

### Limitation of Handling

This regulation, designed to promote orderly marketing of Florida tomatoes, imposes minimum grade, size, quality and maturity standards and requires inspection of fresh shipments to keep undesirable tomatoes from being shipped to consumers.

Notice of rulemaking with respect to a proposed handling regulation, to be effective under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), regulating the handling of tomatoes grown in the production area, was published in the October 10, 1973, *FEDERAL REGISTER* (38 FR 27937). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The notice afforded interested persons through October 19, 1973, to file written data, views or arguments pertaining to that proposal. None was filed.

The recommendations of the Florida Tomato Committee reflect its appraisal of the composition of the 1973-74 crop of Florida tomatoes and the marketing prospects for this season. The requirements for containers, container net weights, size classifications, and inspection are intended to standardize shipments in the interest of orderly marketing and thereby improve net returns to producers. Such requirements will contribute to the prevention of deceptive packing practices and will thus provide a basis for informed sale and purchase decisions on the part of both handlers and consumers. The minimum grade and size requirements should preclude shipments to fresh market of tomatoes which usually are of negligible economic value to producers.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. The provisions for special pack are designed to meet the different requirements for such shipments. Shipments may be made to certain special purpose outlets without regard to the above require-

ments: *Provided*, That safeguards are used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are so exempted because the act prohibits regulation of such tomatoes. Likewise shipments for relief or charity are exempt from all requirements; to do otherwise would serve no useful purpose. Shipments for export are exempted from grade and size classifications, inspection and container requirements in order to accommodate the different preferences which may occur in export outlets.

Up to 60 pounds of tomatoes per day may be handled without regard to grade and size classification, container, or inspection requirements in order to avoid placing an unreasonable burden on persons handling no commercial quantities of tomatoes.

An exemption is also provided for special types of tomatoes such as elongated and cerasiform because they have characteristics which differ substantially from regular tomatoes and they do not compete as identical substitutes.

After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553) in that shipments of 1973-74 crop tomatoes grown in the production area have begun and the regulation should become effective at the time herein provided to maximize the benefits to producers. The Florida Tomato Committee held an open meeting on September 7, 1973, to consider recommendations for a handling regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; and compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

The regulation is as follows:

### § 966.311 Handling regulation.

Except as otherwise provided, during the period beginning the effective date hereof through June 16, 1974, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) of this section or are exempted by paragraphs (b) or (d) of this section.

(a) *Grade, size, container and inspection requirements.*—(1) *Grade.* Tomatoes shall be graded and meet the requirements specified in either § 51.1855 U.S. No. 1, § 51.1856 U.S. Combination, § 51.1857 U.S. No. 2 or § 51.1858 U.S. No. 3, of the U.S. Standards for Grades of