

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA PROCESSING TOMATO INSPECTION PROGRAM

Effective January 15, 1987
Incorporating Amendments Through April 29, 2014

CALIFORNIA PROCESSING TOMATO INSPECTION PROGRAM

ARTICLE I

PURPOSE AND DEFINITIONS

Section A. PURPOSE. The purpose of this California Processing Tomato Inspection Program is to establish quality standards for processing tomatoes and to conduct a grading program to assure the orderly marketing of uniform quality processing tomatoes.

Section B. DEFINITION OF TERMS. As used in this Program, the following terms shall have the following meanings:

1. "California Processing Tomato Inspection Program" or "Program" means, unless the context indicates otherwise, this marketing order, directly affecting both producers and handlers of processing tomatoes, which is issued by the Secretary, pursuant to the provisions of the Act.

2. "Act" means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code.

3. "Secretary" means the Secretary of Food and Agriculture of the State of California.

4. "Processing Tomato Advisory Board", "Processing Tomato Board", "Tomato Board", and "Board" are synonymous and mean the Processing Tomato Advisory Board created pursuant to Article II of this Program.

5. "Person" means any individual, partnership, corporation, firm, association, subsidiary, affiliate, or other business unit.

6. "Processing Tomatoes" and "tomatoes" are synonymous and for purposes of this Program mean any and all varieties of tomatoes either grown or processed in California, which are commercially canned, dehydrated, or made into tomato paste, tomato puree, tomato pulp, tomato catsup, tomato sauce, tomato juice, or similar manufactured tomato products. "Processing tomatoes" do not include hard green tomatoes for use in the manufacture of green tomato products.

7. "Area" or "Area of Production" means the State of California.

8. "Producer" or "Grower" are synonymous and mean any person who is, within the State, the legal entity contracting with a processor for tomatoes, regardless of where such tomatoes are delivered for processing.

9. "Processor" means any person engaged within the State in the business of processing tomatoes in any form for commercial purposes regardless of where such tomatoes are produced.

10. "Marketing Season", "Fiscal Year" and "Fiscal Period" are synonymous and mean the period beginning January 1 of any year and extending through December 31 of the same year.

11. "Tomato Inspector" means any person employed by the Board or any agency under contract with the Board who is authorized to inspect processing tomatoes.

ARTICLE II

PROCESSING TOMATO ADVISORY BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. A Board to be known as the Processing Tomato Advisory Board is hereby established to assist the Secretary in the administration of this Program. The Board shall be composed of ten (10) members, five (5) of whom shall be producers of processing tomatoes; and five (5) of whom shall be processors of processing tomatoes as herein defined.

2. There shall be an alternate member for each member of the Board. The alternate shall be selected in the same manner and for the same term as the member.

3. Members and alternate members shall be appointed by the Secretary from nominations received for that purpose.

4. The term of office of members and alternate members of the Board, except the initial Board, shall be three (3) years, beginning January 1 of the year in which they are appointed and continuing at the pleasure of the Secretary through the last day of December of the third year following their appointment, or until their successors have been appointed and have qualified. However, to provide for a staggered term of office for appointees to the initial Board: two (2) processor members and two (2) producer members shall serve a one-year term; two (2) processor members and two (2) producer members shall serve a two- year term; and one (1) processor member and one (1) producer member shall serve a three-year term. The terms of office of the members of the initial Board shall be determined by lot.

5. Notwithstanding other provisions of this Article II, the Board may recommend and the Secretary may appoint one (1) member and one (1) alternate member to the Board to represent the general public, in addition to the ten (10) members of the Board provided for in this Section A. Such persons shall not be affiliated in any way with respect to the production or marketing of processing tomatoes and shall have all of the rights and privileges, including voting, of any other member or alternate member of the Board. The regular term of office of any member or respective alternate member appointed pursuant to this Subsection 5 shall be as close as possible to three (3) full years and shall terminate on the last day of December.

Section B. NOMINATION OF MEMBERS OF PROCESSING TOMATO ADVISORY BOARD.

1. Nominations of persons eligible to serve on the initial Advisory Board shall be received at the public hearing held on this Program.

2. The Secretary shall appoint the initial members and their alternates from nominations received at such public hearing.

3. Prior to November 1, 1987, and no later than November 1 each year thereafter, the Secretary shall mail a notice to producers and processors for the purpose of receiving nominations of persons eligible for appointment as producer and processor members and alternates of the Board.

4. The nomination of producers for appointment to the Board may be made by any individual producer or by organizations and associations of producers of tomatoes for processing.

5. The nomination of processors for appointment to the Board may be made by any individual processor or by organizations and associations of handlers of tomatoes for processing.

6. The Secretary shall appoint producer and processor members and their respective alternates to the Board for the term of office beginning January 1 from the nominees received.

7. Each producer member and alternate member of the Board shall be, during his term of office, a producer or an employee of a producer of processing tomatoes.

8. Each processor member and alternate member of the Board shall be, during his term of office, a processor of tomatoes, or an employee of a processor.

Section C. FAILURE TO NOMINATE. In the event nominations are not made pursuant to Section B of this Article, the Secretary may appoint the members of the Advisory Board and their respective alternates, without regard to nominations, from persons who are qualified as provided for in Section A of this Article.

Section D. QUALIFICATION. Any person appointed by the Secretary as a member or as an alternate member of the Board shall qualify by filing with the Secretary a written acceptance and such other documents as may be required.

Section E. ALTERNATE MEMBERS. An alternate member of the Board shall, in the absence of the member for whom he or she is an alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meetings. In the absence of both a member and his or her alternate, the chairman may designate any other alternate of the same classification to act in place of that member. In the event of the death, removal, resignation, or disqualification of a member, his or her alternate shall act in his or her place and stead until a successor of such member is appointed and has qualified. (Amended April 29, 2014)

Section F. VACANCIES. The Secretary shall fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Advisory Board. In replacing a member or alternate member of the Advisory Board, the Secretary may take into consideration any nominations made by the remaining members; provided, however, that such nominees shall be appointed in accordance with the provisions of Section A of this Article.

Section G. ORGANIZATION.

1. Six (6) members of the Board, or their voting alternates comprising at least three (3) producers and three (3) processors, shall constitute a quorum. Any action of the Board shall require not less than three (3) affirmative votes of the producer members and three (3) affirmative votes of the processor members.

2. The Board shall select a chairman and a vice-chairman from its membership, and such other officers as it may desire, and may adopt such rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary. The chairman and vice-chairman shall alternate annually between the producer and processor members. In the years when a processor member is the chairman, a producer member shall be the vice chairman and in years when a producer member is chairman a processor member shall be vice chairman.

Section H. COMMITTEES. The Board may recommend and the Secretary may appoint such committees as may be deemed necessary to assist the Board and the Secretary in performing duties authorized pursuant to this Program.

Section I. EXPENSES. The members of the Board, alternate members when acting as members or when requested by the Board, and committee members may be reimbursed upon request for necessary expenses incurred by them in the performance of their duties and in the exercise of their powers hereunder.

Section J. DUTIES AND POWERS OF THE ADVISORY BOARD. The Advisory Board shall have the following duties and powers, which may be exercised subject to the approval of the Secretary:

1. To administer the provisions of this Program.
2. To recommend to the Secretary administrative rules and regulations which relate to this Program.
3. To receive and report to the Secretary complaints of violations of this Program.
4. To recommend to the Secretary amendments to this Program. Amendments of the provisions of Article III relating to quality standards and inspection shall be deemed to be minor amendments.

5. To assist the Secretary in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Secretary in the administration of this Program.

6. To assist the Secretary in the collection of such necessary information and data as the Secretary or the Board may deem necessary to the proper administration of this Program and of the Act.

7. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions and to provide the Secretary with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall at all times be subject to examination by the Secretary or his duly authorized representatives.

8. To employ such personnel as may be deemed necessary and to fix their compensation and terms of employment.

9. To receive, invest and disburse funds pursuant to Article 10 of the Act.

10. To recommend annual budgets and review expenditures, with such expenditures to include but not be limited to program operational costs, Department overhead charges and State pro-rata charges.

Section K. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD. The members of the Board or any committees hereunder duly appointed by the Secretary, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any producer, processor or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board, committee, or employee. The liability of the members of the Board, its committees, or employees, shall be several and not joint, and no members shall be liable for the default of any other member.

ARTICLE III

QUALITY STANDARDS AND INSPECTION

Section A. ESTABLISHMENT OF REGULATIONS FOR DETERMINING QUALITY.

1. Quality Regulations. The regulations for determining the quality of processing tomatoes will be as set forth in this Article III, or until amended. Any amendment of the provisions of Section A of Article III to be effective beginning with the current marketing season shall be recommended by the Board no later than February 1 of that marketing season. A recommendation for the extension of the deadline up to but not beyond April 1 shall be made by the Board prior to February 1 of any year in which the Board finds that such an extension is necessary due to extenuating circumstances. If the Secretary approves the Board recommendation, the deadline extension shall be made effective for that marketing season only. Upon receipt of a recommendation by the Board that regulations for determining quality for a marketing season covered by this Program should be amended and, if after investigation and examination of the report of the Board and other pertinent data the Secretary finds that the issuance of such amended regulations with respect to the receipt of processing tomatoes is necessary and proper and will tend to effectuate the declared purposes of the Act and attain the objectives of this Program, the Secretary may issue such amended regulations establishing tomato quality and defects and such other matters as may be required or permitted under Article III, and shall limit the receipt of processing tomatoes to those which have been inspected pursuant to such regulations.
(Amended January 31, 1997)

2. Field Identification Tag. A field identification tag shall be furnished to the Advisory Board with each load of tomatoes prior to inspection. One (pink) copy of the field identification tag shall be preprinted "Board copy" and retained by the Board. The field identification tag shall be a minimum size of 4" x 5". The name of the processor, producer, current date, and the contract number applicable to the load shall be shown in the upper left-hand corner of the field identification tag. Each field identification tag shall be printed and serial numbered.

3. Color Determination. Any load of tomatoes which is offered for delivery to a processor may be rejected and turned back to the producer if the tomatoes do not meet the minimum standards for color based on comminuted raw product sampling. The maximum Board approved tomato color instrument reading suggested to meet the minimum color for tomatoes shall be 39.
(Amended June 11, 1996 and January 31, 1997)

4. Worm/Insect Damage. Any load of tomatoes which is offered for delivery to a processor may be rejected and turned back to the producer if in excess of two percent, by weight, is affected by worm or insect damage. A tomato is scoreable when a worm or insect has penetrated the flesh. Open holes which have no worm, insect or excreta present, shall not be considered as worm/insect damage. (Amended March 15, 1991 and January 31, 1997)

5. Mold. Any load of tomatoes which is offered for delivery to a processor may be rejected and turned back to the producer if in excess of 8 percent, by weight, is affected by mold. A tomato is scoreable for mold when (a) mold has penetrated the wall of the tomato and is plainly visible on the inside of the wall of the tomato, or (b) mold has penetrated into the wall structure, but not through to the locule, and the mold has affected in its penetration enough of the volume of the wall of the tomato to make it necessary, as would be done in normal preparation for processing purposes, to remove more than 10 percent of the weight of the tomato. "Mold" as used in this section means there is present in the flesh of the tomato mycelium or mycelium and spores of any kind of mold fungus which has affected the tomato. (Amended January 31, 1997)

6. Green. Any load of tomatoes which is offered for delivery to a processor may be rejected and turned back to the producer if in excess of 4 percent by weight, is green. A tomato is scoreable for green when the external surface of the tomato is green with no visible shade of red. (Amended January 31, 1997)

7. Material Other Than Tomatoes. Any load of tomatoes which is offered for delivery to a processor may be rejected and turned back to the producer if in excess of 3 percent of the delivery, by weight, contains material other than tomatoes. Material other than tomatoes includes extraneous material, dirt, and detached stems. (Amended January 31, 1997)

8. Certification of Nonrejectable Categories.

(a) Limited Use. A tomato is scoreable as "Limited Use" and the percentage recorded on the certificate, if:

(1) It has a soft water condition with more than 25 percent of the skin separated from the underlying flesh;

(2) More than 50 percent of the tomato is soft and mushy;

(3) The fruit is broken to the extent the seed locules are visible.

(b) Seed Sprouts. A tomato is scoreable, and so indicated in the check box, when seed sprouts are present in most of the cells or a single sprout exceeds 5/16 inch (.8 centimeters) in length in any cell.

9. Gray Wall Recorded for Information Purposes. The Secretary shall record on the certificate, the indication of gray wall if found during inspection. "Gray wall" means dark brown or black discoloration of the vascular bundles in the wall of the tomato.

Section B. DETERMINATION OF QUALITY.

1. Delivery and Acceptance of Tomatoes. No load of processing tomatoes shall be unloaded for processing purposes until a Tomato Inspector has inspected and issued a certificate of inspection as prescribed by this Article for the load. Provided, that the Board, upon request of any processor, may exempt from such inspection any load of six (6) tons or less, provided that such exempt loads shall be subject to inspection if the Board deems necessary and, provided further, that any tomatoes exempt from inspection are subject to all other provisions of this marketing order. (Amended June 1, 1995 and January 31, 1997)

2. Sampling. Processing tomatoes shall be determined to be suitable or unsuitable for processing purposes, by the examination of the tomatoes in a representative sample. Each sample probe from a bin or bulk load or each sample taken with a bin sampler shall contain 50 pounds of tomatoes. Loads of processing tomatoes shall be sampled only at locations and with sampling equipment approved by the Board. The number of samples shall be as follows:

(a) Bins. The number of bins to be sampled shall be determined by the total number of bins in the load and shall be selected from various parts of the load. Approximately one-half of the number of bins comprising the sample shall be bins located below the top layer of the load. The balance of sample bins may be from the top layer. One sample shall be taken from each bin selected. Two probes (samples) shall be taken from each bin load. (Amended March 10, 1990)

(b) Bulk. All bulk containers shall be clearly marked with a minimum two inch wide and three inch long black line indicating the location of each inside support brace. Each line shall be on the top lip of the container so that it is clearly visible to the sample operator. (Amended March 10, 1989)

The number of probes to be taken shall be determined by the total number of tons in the load. From loads containing 30 tons or less, two probes shall be taken from the load. (Amended March 10, 1990)

3. Delivery of Tomatoes Onto Mechanized Grading Table.

(a) The delivery of tomatoes onto the mechanized grading table shall be accomplished by the use of sample boxes approved by the Board. (Amended June 1, 1995)

(b) Each sample shall be dumped on the mechanized grading table by using a mechanical device which prohibits lateral movement of the sample box while it is being dumped. Each device shall be installed in such a manner that the sample is dumped with a minimum amount of vertical fall.

(c) Subsections 3(a) and 3(b) do not apply to mechanized grading tables installed at inspection stations prior to May 1, 1977.

4. Delivery of Tomatoes Onto Standard Grading Tables. Tomatoes shall be sampled, placed in sample boxes, conveyed to, and dumped directly on the grading table. Sample boxes shall be furnished by the Board.

5. Regrade. An authorized inspector may elect to regrade a load of tomatoes.

If a regrade is performed, a complete new sample shall be taken, but from a different location of the same load. Not more than two inspections shall be made for any one load or lot and the results shall be averaged together. This average will then be considered the final inspection for the load or lot of tomatoes.

6. Percentage Chart. When tomatoes are in sample boxes designed to hold 50 pounds of tomatoes: (1) The official "percentage chart" issued by the Board shall be used to determine the percentage of defects; and (2) the boxes of tomatoes selected as a sample for the purpose of inspection and determining the percentage of defects shall be normally filled and shall be considered as holding 50 pounds of tomatoes.

7. Adequate Facilities. The Advisory Board shall review inspection stations for adequacy of facilities at least 60 days prior to start of tomato harvest. Prior to the remodeling or construction of an inspection station, the Board shall be provided with a general diagram of intended work and office area, type and quantity of inspection equipment, and an estimated load volume so the adequacy of facilities can be determined. The Board shall approve the inspection facility, if satisfied it complies with this Article.

Safety and sanitation inspections by the Board are for the safety and health of employees working at the stations. Safety and sanitation standards do not preempt compliance with other regulations for occupational safety or public health.

a) Minimum Load and Yard Requirements.

(1) Inspection stations shall be designed to accommodate adequately through the inspection process six loads per hour for each grading table when staffed by inspection personnel grading all tomato samples delivered from sampling equipment.

(2). Surface adjacent to each station shall be concrete, blacktop, or similar hard material. If bins of tomatoes are to be inspected, there shall be a level, firm surface adjacent to the traffic flow for operation of forklift equipment. If station operates at night, the yard shall have adequate lighting.

(3) Stations shall have adequate yard space for trucks and parking to meet the operational requirements of this section.

(b) Office and Inspection Area Floor Space.

(1) Inspection station offices shall contain a minimum of 80 square feet of floor space, except stations designed for three (3) or more grading tables or one (1) or more mechanized grading tables shall contain a minimum of 120 square feet of office floor space.

(2) Inspection area floor space shall conform to the following minimum requirements or their equivalents: 24' x 20' for installation of two (2) regular grading tables or one (1) mechanized grading table. 24' x 28' for installation of three (3) regular grading tables. 24' x 36' for installation of four (4) regular grading tables or two (2) mechanized grading tables.

A minimum of eight (8) feet of width of floor space shall be required for each additional regular table and minimum of twelve (12) feet in width for each additional mechanized grading table. Stations with special equipment needs shall provide adequate inspection area floor space to accommodate those needs.

A mechanized grading table is defined as that table designed by the University of California, Davis, including all additions.

(3) New stations or stations remodeled to comply with the provisions of this Article shall be constructed with the office and inspection area floors not less than five (5) feet nor more than six (6) feet above ground level, except slab constructed stations shall be not less than three (3) feet nor more than six (6) feet above ground level.

Stations located inside a cannery may be floor level.

(c) Equipment Requirements. The Advisory Board shall approve the adequacy of each station's inspection equipment which shall include, but is not limited to the following:

(1) Grading tables constructed in accordance with specifications provided by the Board.

(2) Inspection area floor space shaded from direct sunlight.

(3) Electrical outlets grounded and conveniently located for operation of inspection equipment.

(4) Electricity adequate to operate all inspection equipment simultaneously.

(5) A vacuum pump which will create in the blending container a vacuum of not less than 27 inches of mercury within 30 seconds from start of operation and maintain this vacuum for the duration of the blending operation.

(6) Provisions for water and adequate sink and counter space.

(7) Equipment to obtain without undue delay a representative sample of tomatoes.

(8) A drinking fountain with potable water located in the inspection station's office or inspection area floor space.

(d) Sanitation and Safety. Facilities needed for protecting food sanitation, to permit proper inspection and to provide for incidental health and safety shall be provided, and shall include but not be limited to the following:

(1) Separate toilet facilities for men and women. When there are less than five employees, separate toilet rooms for each sex are not required provided toilet rooms can be locked from the inside and contain at least one water closet. Adequate supplies shall be provided for every water closet. (Amended January 15, 2003)

(2) Toilet facilities shall be located in the inspection station building or within reasonable distance from inspection facilities. Portable toilets approved for use must be ADA compliant, lighted properly, maintained in a sanitary condition, and contain washing facilities, climate control and fan ventilation. Holding tanks should be emptied at least twice per week. For purposes of this section, the definition of climate-controlled portables means that the unit is shaded from the sun to ensure the inside ambient temperature does not exceed 95°F. (Amended January 15, 2003)

(3) Premises kept reasonably free from insects such as vinegar flies, house flies, and other flying pests.

(4) Adequate facilities to eliminate standing liquids from station's office and inspection area floor space and around building.

(5) A closed system for removal of water-carried waste material.

(6) Floors shall be of nonskid material.

(7) Floors and station premises and toilet facilities shall be maintained in a clean condition.

(8) Waste material shall be removed at least once daily from beneath inspection area platform.

(9) Area where tomatoes are spilled from sampling equipment shall be kept clean.

(10) Conveying equipment for dispatch and return of all sample containers shall conform to the following:

(a) Overhead return conveyors shall be a minimum of 6 feet above floor level;

(b) Conveyors obstructing movement within work areas less than 6 feet above floor level shall be constructed with gates or stairs over conveyors;

(c) Conveyors shall have side rails sufficient to prevent sample containers from falling.

(11) Hand rails shall be provided at all step and stairway locations.

(12) Electrical outside wiring shall be installed underground or overhead.

(13) Adequate fire extinguishers visibly located and readily accessible.

(e) Dumping and Drainage Facility.

(1) Tomatoes shall not be dumped within 500 yards of inspection station.

(2) Truck trailers shall not be drained within 250 yards of stations unless emptied into a drainage facility approved by the Advisory Board.

Examples of acceptable drainage facilities are:

(1) city sewer systems;

(2) paved pads with a large, closed holding tank buried in the ground, or

(3) an open ditch more than 250 yards from work site.

(f) Inadequate Inspection Facilities. If, after reviewing the submitted information, it is determined that the inspection station facilities are not adequate to inspect projected tomato tonnage, the Board shall take the following action:

(1) Sixty days prior to commencement of inspection activity at a station, or as soon thereafter as practical, the station owner and appropriate processors will be advised in writing by the Board that adequate facilities are not provided.

(2) If the station owner fails to provide adequate inspection facilities, the Board may disapprove the facility entirely or designate the maximum number of loads that will be allowed through the station for any 24-hour period.

8. Station Deliveries. Tomatoes shall not be delivered to any station for inspection by producers or processors in excess of the maximum number of loads designated by the Board.

(a) Acreage and Load Information. In order to determine whether inspection stations are adequate, the Board shall be provided each year with the following information:

(1) Each processor shall provide, 75 days prior to commencement of inspection, the total tomato acreage to be harvested by or for that processor, and the estimated total acreage of tomatoes for inspection at each inspection station. The information shall be reported in tons, loads, or acres to be harvested.

(2) Each processor shall provide in writing, prior to May 15 of each year, a list of inspection stations of intended use including names, addresses, and contract numbers of applicable producers who will have tomatoes inspected at each station. Any additions or deletions to the list shall be submitted promptly.

(b) Daily Load Information. Each processor shall provide load information for their company, by station, prior to 5 p.m. daily for the following day.

(c) Consigning Loads to Alternate Locations. The Advisory Board may designate alternate stations where tomatoes will be inspected if delays in inspection occur due to equipment breakdowns or lack of adequate facilities. The Board may announce to all parties of record affected by such action that truck loads of tomatoes will be directed to less congested stations if:

(1) No unreasonable burden will be imposed upon station owners, processors, or producers; and

(2) Tomatoes which are normally inspected at such station will not be hauled an unreasonable distance.

(d) Easement. Inspection stations approved by this Board are for the purpose of enforcing the provisions of this Program. No station owner or operator shall refuse entrance to this Board for enforcement purposes or to the public using the facilities. This Board may withdraw inspection at any station for any of the following reasons:

(1) The station facilities fail to meet building, safety, or sanitation standards; or

(2) Any other violation of law or regulations relating to operation of inspection stations; or

(3) Inadequate tonnage of tomatoes to warrant continuation of inspection.

9. Soluble Solids. The Board shall provide inspection for testing of soluble solids. The Board shall record the percentage of soluble solids on the certificate. The determination shall not be cause for rejection.

The testing equipment shall be approved and provided by the Board. The refractometers shall be a hand type, temperature compensated with a 0 to 30 scale and/or a digital bench type, temperature compensated with at least a 0 to 30 scale.

The sample to be tested for soluble solids shall be collected in conjunction with or as a portion of the normal representative sample.

10. Authority. The Advisory Board may provide authority for special services. This inspection is optional and provided only upon written request from the processor or producer involved. The Board shall establish a fee for the service.

ARTICLE IV

INSPECTION RESEARCH

Section A. RESEARCH ON INSPECTION METHODS AND MACHINERY. The Advisory Board is authorized, subject to the approval of the Secretary, to undertake or cause to be conducted, to administer, to enter into contracts with qualified research agencies and to expend monies for research relating to inspection of processing tomatoes.

ARTICLE V

COMPLIANCE

The following are deemed to be violations of this Program:

1. The delivery or acceptance of tomatoes for processing purposes by any person, or the processing of any tomatoes, which have not been certified as meeting the requirements of Article III of this Program or the regulations established pursuant to this Program.

2. The delivery by any person to a processor or the acceptance of delivery by any processor of any load of tomatoes which has been rejected for failing to comply with the standards established pursuant to Article III of this Program, until such load has been reconditioned to comply with the standards, reinspected, and a certificate issued by the proper enforcing officer.

3. To remove, deface, or destroy, any warning tag or notice which has been placed by a tomato inspector upon a rejected lot or load of tomatoes for processing purposes.

ARTICLE VI

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD. At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Board shall recommend to the Secretary a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. The Board shall also recommend a rate or rates of assessment to be levied equally upon producers and processors of California processing tomatoes upon a uniform basis, sufficient to provide adequate funds to defray the proposed expenditures and reserve as set forth in said budget or budgets, provided, that in the application of the assessment on producers and processors, the Secretary may take into account the cost of operating individual inspection stations. Any processing tomatoes exempted by the Board from inspection shall pay only that portion of the rates not related to inspection. (Amended June 1, 1995)

Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT BY THE SECRETARY. If the Secretary finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Program, he or she may approve such budgets and rates; provided, however, that in no event shall said rates of assessment exceed the maximum rates authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS. The obligation to pay assessments under this Program shall apply equally to producers and processors on all processing tomatoes produced for market by said producers, and delivered to said processors. To facilitate collection, each processor shall pay the entire applicable assessment on all tomatoes received by him or her from a producer at the rates approved by the Secretary pursuant to the provisions of this Program. The processor may, however, deduct any assessment paid for and on behalf of the producer from any money owed by the processor to the producer. Assessments shall be remitted to the Board or the Secretary weekly during the tomato processing season. The Secretary shall verify that proper payment has been made by processors for and on behalf of producers. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Secretary or the Board upon demand. In any event of failure of any person to pay any assessment payable hereunder, the Secretary may file a complaint against such person in a State court of competent jurisdiction for the collection thereof, pursuant to the provisions of Sections 58929 and 59234.5 of the Act. The Secretary may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such unpaid assessment, and such producer or processor will also be subject to the interest penalty provisions of Section 58930 of the Act.

Section D. REFUNDS. Any money collected as assessments during the marketing season and not expended in connection with this Program may, at the discretion of the Secretary, be refunded after the close of any marketing season, upon a pro rata basis to all persons from whom assessments were collected; or all or a portion of such money, as may be recommended by the Board and approved by the Secretary, may be carried over into the next marketing season if the Secretary finds that such money may be required in defraying the cost of this Program in such succeeding season.

ARTICLE VII

GENERAL PROVISIONS

Section A. ADMINISTRATIVE RULES AND REGULATIONS. Upon the recommendation of the Processing Tomato Advisory Board, the Secretary is authorized to issue and make effective such administrative rules and regulations and interpretations of terms as may be necessary to carry out the purposes and attain the objectives of this Program.

Section B. COORDINATION WITH OTHER STATE OR FEDERAL MARKETING ORDERS. Insofar as may be practicable, the administration of this Program may be coordinated with any other marketing order or agreement or program that may be made effective for processing tomatoes under either State or Federal statutes, or may be coordinated with State or Federal marketing orders, or commissions, or agreements, or programs for any other commodity.

ARTICLE VIII

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Secretary or his duly authorized or designated representatives such information as may be, from time to time, requested by him or her relating to their operations under this Program, and shall permit the inspection by said Secretary or his duly authorized or designated representatives of such portions of their books and records as relate to operations under this Program.

Section B. REPORTS TO THE ADVISORY BOARD. Upon request of the Advisory Board, made with the approval of the Secretary, each person shall furnish to the Board in such manner and at such times as the Board prescribes, and in addition to such other reports as are specifically provided for herein, such other information as will enable the Board to perform its duties and to exercise its powers in the proper administration and enforcement of this Program.

Section C. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him or her to any other person, save to a person with like right to obtain the same, or any attorney employed by the Secretary to give legal advice thereupon, or by court order.

Section D. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Secretary in obedience to the subpoena of the Secretary on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her tends to incriminate him or her or subjects him or her to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may be so required to testify or produce evidence, documentary or otherwise, before the Secretary in obedience to a subpoena issued by him or her.

ARTICLE IX

APPEALS

Section A. APPEALS. Any person regulated by this Program may petition the Secretary to review any order or decision of the Advisory Board. Any such petition must be filed in writing setting forth the facts upon which it is based, and shall be acted upon in an expeditious manner by the Secretary.

Section B. EFFECT OF APPEAL. Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of the Advisory Board, unless the Secretary shall rule otherwise. The Secretary shall, if the facts stated show reasonable grounds, grant any such petition and may revise any order or decision upon which an appeal is taken.

ARTICLE X

RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of the Act shall be a complete defense to such action or proceeding.

ARTICLE XI

DURATION OF IMMUNITIES

Section A. DURATION OF IMMUNITIES. The benefits, privileges, and immunities conferred by virtue of the provisions hereof shall cease upon its termination except with respect to acts done under and during the time the provisions hereof are in force and effect.

ARTICLE XII

AGENTS

Section A. AGENTS. The Secretary may, by a designation in writing, name any person, including any officer or employee of the State or any branch or division in the California Department of Food and Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

ARTICLE XIII

DEROGATION

Section A. DEROGATION. Nothing contained herein is or shall be construed to diminish or modify the rights of the Secretary or of the State to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XIV

SEPARABILITY

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

ARTICLE XV

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME. This Program shall become effective on the date specified by the Secretary and shall continue in effect until suspended or terminated by the Secretary or by operation of law in accordance with the provisions of the Act. In accordance with Section 59086 of the Act, the Secretary shall, at least once every five years, hold a hearing to determine whether the Program is effectuating the purposes and provisions of the Act.

Section B. TERMINATION. Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Secretary shall suspend or terminate this Program or any provision thereof whenever he or she finds, after a public hearing duly noticed and held in accordance with provisions of Article 6, Chapter 1, Division 21 of said Food and Agricultural Code, that this program or any provision thereof is contrary to or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restrictions therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Secretary shall also suspend the provisions of or terminate this Program in accordance with the provisions of Sections 59082, 59083, 59084, or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT. Unless otherwise expressly provided for in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of the Program issued by the Secretary shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Program not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Secretary or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Program.