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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 966**

**[Doc. No. AMS-FV-15-0058; FV15-966-1 FIR]**

**Tomatoes Grown in Florida; Decreased Assessment Rate**

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that implemented a recommendation from the Florida Tomato Committee (Committee) to decrease the assessment rate established for the Florida Tomato Committee (Committee) for the 2015-2016 and subsequent fiscal periods from \$0.0375 to \$0.03 per 25-pound carton of tomatoes handled under the marketing order (order). The Committee locally administers the order and is comprised of producers of tomatoes operating within the area of production. The interim rule was necessary to more closely align assessment income to the Committee's lower budget.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Steven Kauffman, Marketing Specialist or Christian D. Nissen, Regional

Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: Steven.Kauffman@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and 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 Orders 12866, 13563, and 13175.

Under the order, Florida tomato handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Florida tomatoes for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1, and ends on July 31.

In an interim rule published in the **Federal Register** on November 25, 2015, and effective on November 27, 2015, (80 FR 73642, Doc. No. AMS-FV-15-0058; FV15-966-1 IR), § 966.234 was amended by decreasing the assessment rate established for Florida tomatoes for the 2015-2016 and subsequent fiscal periods from \$0.0375 to \$0.03 per 25-pound carton. The decrease in the per 25-pound carton assessment rate more closely aligns assessment income to the Committee's lower budget.

## **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

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 of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2014-15 season was approximately \$10.58 per 25-pound container, and total fresh shipments for the 2014-15 season were approximately 36.5 million cartons. Based on the average price, about 80 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2015-16 and subsequent fiscal periods from \$0.0375 to \$0.03 per 25-pound carton of tomatoes. The Committee unanimously recommended 2015-16 expenditures of \$1,513,177 and an assessment rate of \$0.03 per 25-pound carton. The assessment rate of \$0.03 is \$0.0075 lower than the 2013-14 rate. The quantity of assessable tomatoes for the 2015-16 season is estimated at

33 million cartons. Thus, the \$0.03 rate should provide \$990,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, interest income, and funds from block grants, will be adequate to cover budgeted expenses. The decrease in the per 25-pound carton assessment rate more closely aligns assessment income to the Committee's lower budget.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 25, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 "Vegetable and Specialty Crops." No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before January 25, 2016. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-15-0058-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (80 FR 73642, November 25, 2015) will tend to effectuate the declared policy of the Act.

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

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

**PART 966 - TOMATOES GROWN IN FLORIDA**

Accordingly, the interim rule amending 7 CFR part 966, which was published at 80 FR 73642, November 25, 2015, is adopted as a final rule, without change.

Dated: March 17, 2016

Elanor Starmer  
Acting Administrator  
Agricultural Marketing Service

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