



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Doc. No. AMS-SC-17-0051; SC17-966-1 FR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Florida Tomato Committee (Committee) for a decrease of the assessment rate established for the 2017-18 and subsequent fiscal periods for tomatoes grown in Florida, handled under the Marketing Order. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated. This rule also makes administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Steven W. 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 request information on complying with this regulation by contacting Richard Lower, 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: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement No. 125 and Order No. 966, as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. Part 966, (referred to as 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 Committee locally administers the Order and is comprised of producers of tomatoes operating within the area of production.

The Department of Agriculture (USDA) is issuing this

rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable tomatoes beginning on August 1, 2017, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the 2017-18 and subsequent fiscal periods from \$0.035 to \$0.025 per 25-pound container or equivalent of tomatoes handled.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services

in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2016-17 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 22, 2017, and unanimously recommended 2017-18 expenditures of \$1,494,600 and an assessment rate of \$0.025 per 25-pound container or equivalent of tomatoes. Last year's budgeted expenditures were also \$1,494,600. The assessment rate of \$0.025 is \$0.010 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to reduce the assessment burden on handlers and utilize funds from the authorized reserve to help cover Committee expenses.

The major expenditures recommended by the Committee for the 2017-18 year include \$450,000 for staff salaries, \$400,000 for research, and \$400,000 for education and promotion. Budgeted expenses for these items in 2016-17 were the same.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of Florida tomatoes, and the level of funds in the authorized reserve. Tomato shipments for the year are estimated at 33 million 25-pound containers, which should provide \$825,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$979,410) will be kept within the maximum permitted by the Order (approximately one fiscal period's expenses as stated in § 966.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2017-18 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

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 80 producers of Florida tomatoes in the production area and 47 handlers subject to regulation under the Marketing Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average annual price for fresh Florida tomatoes during the 2016-17 season was approximately \$8.00 per 25-pound container, and total fresh shipments were 32.8 million containers. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of less than \$7,500,000. Based on production data, an estimated producer price of \$3.00 per 25-pound container, and the

number of Florida tomato producers, the average annual producer revenue is above \$750,000. Thus, a majority of the handlers of Florida tomatoes may be classified as small entities, while a majority of the producers may be classified as large entities.

This rule decreases the assessment rate established for the 2017-18 and subsequent fiscal periods from \$0.035 to \$0.025 per 25-pound container or equivalent of Florida tomatoes. The Committee unanimously recommended 2017-18 expenditures of \$1,494,600 and an assessment rate of \$0.025 per 25-pound container or equivalent handled. The assessment rate of \$0.025 is \$0.010 lower than the 2016-17 rate. The quantity of assessable Florida tomatoes for the 2017-18 fiscal period is estimated at 33 million 25-pound containers or equivalent. Thus, the \$0.025 rate should provide \$825,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2017-18 year include \$450,000 for staff salaries, \$400,000 for research, and \$400,000 for education and

promotion. Budgeted expenses for these items in 2016-17 were also \$450,000, \$400,000, and \$400,000, respectively.

The Committee recommended decreasing the assessment rate to reduce the assessment burden on handlers and utilize funds from the authorized reserve to help cover Committee expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Finance Subcommittee, Education and Promotion Subcommittee, and the Research Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various activities to the Florida tomato industry. The Committee ultimately determined the assessment revenue, along with interest income and funds from authorized reserves should be adequate to cover budgeted expenses for the 2017-18 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average producer price for the 2017-18 season could be about \$6.50 per 25-pound container or equivalent of Florida tomatoes. Therefore, the estimated

assessment revenue for the 2017-18 crop year as a percentage of total producer revenue should be around 0.4 percent.

This action decreases 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 22, 2017, 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 OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule 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. As mentioned in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the *Federal Register* on December 11, 2017 (82 FR 58133). Copies of the proposed rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 10, 2018, was provided for interested persons to respond to the proposal. No comments on the

proposed assessment rate or the administrative revisions were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, 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.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966 - TOMATOES GROWN IN FLORIDA

1. The authority citation for part 966 continues to read as follows:

Authority: 7 U.S.C. 601-674.

[Subpart Redesignated as Subpart A]

2. Redesignate "Subpart – Order Regulating Handling" as "Subpart A – Order Regulating Handling".

[Subpart Redesignated as Subpart B and Amended]

3. Redesignate "Subpart – Rules and Regulations" as Subpart B and revise the heading to read as follows:

SUBPART B - Administrative Requirements

[Subpart Redesignated as Subpart C]

4. Redesignate "Subpart – Assessment Rates" as "Subpart C – Assessment Rates".

5. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2017, an assessment rate of \$0.025 per 25-pound container is established for Florida tomatoes.

[Subpart Redesignated as Subpart D and Amended]

6. Redesignate "Subpart – Handling Regulations" as Subpart D and revise the heading to read as follows:

SUBPART D – Handling Requirements

Dated: March 30, 2018

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2018-06883 Filed: 4/3/2018 8:45 am; Publication Date: 4/4/2018]