



## **Agricultural Marketing Service**

### **7 CFR Part 966**

[Doc. No. **AMS-SC-20-0004; SC20-966-1**]

#### **Tomatoes Grown in Florida; Modification of Handling Requirements; Withdrawal**

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

**ACTION:** Proposed Rule, withdrawal.

**SUMMARY:** The U.S. Department of Agriculture withdraws a proposed rule recommended by the Florida Tomato Committee (Committee) to revise the exemption, container, and definition sections under the Marketing Order's handling requirements and to update language to reflect current industry practices. After reviewing and considering the comments received, the proposed rule is being withdrawn.

**DATES:** As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the proposed rule published on June 9, 2020, at 85 FR 35222, is withdrawn.

**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 Email: Steven.Kauffman@usda.gov or Christian.Nissen@usda.gov.

**SUPPLEMENTARY INFORMATION:** This withdrawal 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 operating within the production area.

This action withdraws a proposed rule published in the **Federal Register** on June 9, 2020, (85 FR 35222) to revise the exemption, container, and definition sections in the handling requirements of the Order. Specifically, the proposal would have removed the exemption for pear shaped or Roma type tomatoes. This would have required Roma type tomatoes to meet the grade, pack and container, inspection, and reporting requirements, and Roma type tomatoes would have been subject to assessment under the Order.

The proposal also would have changed the exemption language for greenhouse and hydroponic tomatoes by eliminating the exemptions for greenhouse and hydroponic production and would have established a new exemption and definition for controlled environment production. It would have also adjusted the pack and container requirements, and updated language to reflect current industry practices.

During the proposed rule's 30-day comment period, eight comments were received. All the comments may be viewed on the internet at <http://www.regulations.gov>. Of

the comments received, one comment favored aspects of the rule, and another favored implementing the handling requirements for Roma tomatoes, but opposed the new exemption definition for "controlled environment." Four comments opposed removing the exemption for Roma tomatoes, and three of these comments also opposed the exemption change and definition for "controlled environment", with one further opposing the changes to the container requirements. The other comments received pertained to issues that were not applicable to the proposed rule.

The proposed rule would have established changes to the handling requirements of the tomato Order. However, section 8e of the Act (7 U.S.C. 608e-1) provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since the proposed rule would have adjusted the exemptions to require previously exempt tomatoes to meet grade and/or size requirements, a corresponding change would have been needed to the tomato import regulations. The corresponding changes to the tomato import regulations were to be addressed in a separate rulemaking action. The comments opposed to the proposed rule focused primarily on the potential impact of changes to the tomato import

regulations stemming from the changes to the domestic requirements as specified by section 8e.

The opposing comments indicated the proposed changes would increase the cost and time to bring imported tomatoes to market. Other comments expressed the proposed rule was an attempt to set up technical barriers to restrict free trade, limit fair competition and would only benefit small economic special interests. Another stated some of the proposed changes were unnecessary, as Roma tomatoes from Mexico already must meet grade requirements under the U.S.-Mexico Suspension Agreement.

Several comments objected to the definition of "controlled environment", stating it was trying to define production techniques that were not used in the Florida production area. Another commenter questioned the development of the "controlled environment" definition, since greenhouse production methods represent a very small portion of the tomatoes handled in Florida. Comments also argued the proposed new exemption and definition were not reflective of production techniques used outside of the production area and the change would negatively impact greenhouse tomatoes. Further, one commenter stated shade-house production differs significantly from open-field tomato production, and that the structures in Mexico are permanent and provide a significant degree of control over

growing conditions and warrant different treatment from open-field production.

Several commenters also expressed that certain proposed changes were inconsistent with the Act and outside the scope of the Order.

After reviewing and considering the comments received, the Agricultural Marketing Service (AMS) has determined there is little support for the proposed changes and the rule to modify the handling requirements for tomatoes grown in Florida should not be finalized. AMS intends to conduct outreach with Florida tomato industry stakeholders and consider whether changes will be proposed in the future. Accordingly, the proposed rule to modify the handling requirements in the Order that published in the **Federal Register** on June 9, 2020, (85 FR 35222) is hereby withdrawn.

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

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

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

Bruce Summers, Administrator,  
Agricultural Marketing Service.

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