



Agricultural Marketing Service

7 CFR Part 966

[Doc. No. **AMS-SC-21-0016; SC21-966-1 PR**]

Tomatoes Grown in Florida; Reapportionment of Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust the number of member seats apportioned to each district represented on the Florida Tomato Committee (Committee). The Department of Agriculture (USDA) is taking this action based on an amendatory change to the marketing order for tomatoes grown in Florida, which reduced the size of the Committee from 12 members to 10. This action would reduce the member seats in each of the two districts from six members and their alternates to five members and their alternates.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this

issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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@usda.gov or Christian.Nissen@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, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed 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 operating within the production area.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more

Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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. A 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 proposed rule invites comments on changes to the Committee membership as prescribed in the Order. USDA is taking this action as a conforming change following amendments to the Order published in the **Federal Register**

on November 16, 2020 (85 FR 72914). The amendments, in part, reduced membership on the Committee from 12 members and their alternates to 10 members and their alternates. This action would reduce the member seats in each of the two districts from six members and their alternates to five members and their alternates, maintaining equitable representation on the Committee from both districts.

Section 966.22 provides for the establishment of membership on the Committee. The ten members and their alternates shall be producers, or officers or employees of a corporate producer, in the district for which selected and a resident of the production area. Section 966.160 defines the two districts from which producers serve as representatives on the Committee.

Section 966.25 provides the authority for the Committee to recommend, with the approval of the Secretary, reapportionment of members among districts, and the reestablishment of districts within the production area. Section 966.161 apportions Committee membership among the two districts pursuant to § 966.25.

The Committee met on November 1, 2018, and February 27, 2019, to recommend changes to the Order. These recommendations included reducing the Committee size from 12 members to 10; reducing the number of districts in the production area from four districts to two, maintaining that membership on the Committee be divided evenly between

the two districts. The reduction to two districts and the reapportionment of Committee membership that provided equal representation of six members in each of those newly formed districts were completed under a separate rulemaking action published in the **Federal Register** on September 26, 2019 (84 FR 50711).

During the Committee's discussion of the amendments and the reduction in Committee size, members indicated they wanted to maintain the equity in membership between the two districts. With the reduction in the Committee size from 12 members and their alternates to 10 members and their alternates, this rule would make a conforming change to the Committee membership as apportioned in § 966.161. This action would reduce the seats in each district from six members and their alternates to five members and their alternates. This would maintain the equitable representation on the Committee and bring the number of apportioned seats in line with the reduced number of members authorized in the Order.

Accordingly, each district would nominate five members and five alternates for a total of 10 members and 10 alternate nominees to serve on the Committee.

Initial 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 proposed rule on small entities. Accordingly, AMS has prepared this initial 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 65 producers of Florida tomatoes in the production area and 41 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$1,000,000 and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

With an estimated producer price of \$14.00 per 25-pound container, the number of Florida tomato producers, and a normal distribution assumed, the average annual producer revenue is above \$1,000,000, (\$14.00 times 22.3 million containers equals \$312,200,000 divided by 65 producers equals \$4,803,077 per producer). Thus, the majority of producers of Florida tomatoes may be classified as large entities.

According to industry and Committee data, the average annual price for fresh Florida tomatoes during the 2019-20

season was approximately \$19.07 per 25-pound container, and total fresh shipments were 22.3 million containers. Using the average price and shipment information, the number of handlers, and a normal distribution assumed, the majority of handlers have average annual receipts of less than \$30,000,000, (\$19.07 times 22.3 million containers equals \$425,261,000 divided by 41 handlers equals \$10,372,220 per handler). Thus, the majority of handlers of Florida tomatoes may be classified as small entities.

This proposed rule would adjust the number of member seats apportioned on the Committee. USDA is taking this action based on an amendatory change to the Order, which reduced the size of the Committee from 12 members to 10. This action would reduce the member seats in each of the two districts from six members and their alternates to five members and their alternates. This change would revise § 966.161 pursuant to the authority in § 966.25.

It is not anticipated that this action would impose any additional costs on the industry. This change is a conforming change and would not establish any new regulatory requirements on handlers. There would be no change in financial costs, reporting, or recordkeeping requirements because of this action.

This action would reduce the apportioned members from six members and their alternates to five members and their alternates in each of the two districts to reflect the

recent amendatory action which reduced the size of the Committee. The balance of representation on the Committee would remain the same with member seats divided evenly between the two districts. The effects of this rule would not be disproportionately greater or less for small entities than for larger entities.

Alternatives to reapportionment were discussed and considered by the Committee. However, these alternatives were rejected. The Committee agreed that given the number of producers had decreased, reducing the Committee size would make it more reflective of today's industry. The Committee also wanted to maintain the balance of representation between the two districts. With the amendatory change to the Order, this action is necessary to make the regulations conform to the Order requirements.

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 would be necessary because of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any 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.

The Committee's meetings are widely publicized throughout the Florida tomato industry, and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the November 1, 2018, and February 27, 2019, meetings were open to the public, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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.

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

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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be amended as follows:

PART 966 - TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

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

2. Revise § 966.161 to read as follows:

§ 966.161 Reapportionment of committee membership.

Pursuant to § 966.25, industry membership on the Florida Tomato Committee shall be reapportioned as follows:

- (a) District 1—five members and their alternates.
- (b) District 2—five members and their alternates.

Erin Morris, Associate Administrator.
Agricultural Marketing Service.