

States: Michigan, New York, Utah, and Wisconsin.

Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 from 28,400.

The impact of this rule would be beneficial to growers and handlers. The recommendation to add another member and alternate is consistent with the order requirements and will provide greater participation on the Board by the industry. Adding procedures for handlers to temporarily defer their inventory reserve holding obligations through written undertakings secured by surety bonds is also consistent with order provisions and will provide handlers with flexibility in their day-to-day processing, packing, and marketing operations.

One alternative to these actions would be to continue the status quo. However, the order requires a change in Board membership, following established nomination procedures, upon a district meeting the volume regulation threshold and thus subject to volume regulation. The order also provides handlers the authority to post surety bonds. Recommending procedures for handlers to implement this authority is another tool the Board hopes to use to facilitate the orderly marketing of tart cherries.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, USDA has not identified any relevant Federal rules which duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this action have been previously approved by OMB and assigned OMB Number 0581-0177. Handlers taking advantage of the bonding option would execute an application which would take about an hour to complete. The total burden hours approved, 4,649 hours, will be adequate to cover this added burden.

The Board's meetings are widely publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the September 2000 meeting

was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

An interim final rule concerning this action was published in the **Federal Register** on July 10, 2001. Copies of the rule were mailed by the Committee's staff to all Committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended September 10, 2001. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber 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 finalizing the interim final rule, without change, as published in the **Federal Register** (66 FR 35889) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

1. The authority citation for 7 CFR part 930 continues to read as follows:

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

#### **PART 930—[AMENDED]**

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 66 FR 35889 on July 10, 2001, is adopted as a final rule without change.

Dated: November 5, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01-28202 Filed 11-8-01; 8:45 am]

**BILLING CODE 3410-02-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 966**

[Docket No. FV01-966-2 IFR]

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

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Florida Tomato Committee (Committee) for the 2001-02 and subsequent fiscal periods from \$0.025 to \$0.02 per 25-pound container of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective November 13, 2001. Comments received by January 8, 2002, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (863)

299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@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 marketing agreement and order are 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 Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing 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 as issued herein will be applicable to all assessable tomatoes beginning August 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 Committee for the 2001-02 and subsequent fiscal periods from \$0.025 per 25-pound container to \$0.02 per 25-pound container of tomatoes.

The Florida tomato marketing 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 1999-2000 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 September 6, 2001, and unanimously recommended 2001-02 expenditures of \$1,666,650 and an assessment rate of \$0.02 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were \$1,910,000. The assessment rate of \$0.02 is \$0.005 lower than the rate currently in effect. The Committee's authorized reserve is larger than necessary. In an effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate.

The major expenditures recommended by the Committee for the 2001-02 fiscal year include \$700,000 for education and promotion, \$418,650 for salaries and benefits, \$320,000 for research, \$51,500 for employee retirement, and \$31,000 for office rent. Budgeted expenses for these items in 2000-01 were \$1,000,000, \$407,800, \$315,700, \$44,900, and \$24,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes, while considering other factors such as the current balance in the reserve fund. Tomato shipments for the year are estimated at 50,000,000 25-pound

containers which should provide \$1,000,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$1,900,000) will be kept within the maximum permitted by the order (approximately one fiscal period's expenses, \$ 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 is 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. The 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 2001-02 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 business 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of tomatoes in the production area and approximately 82 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts

less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on the industry and Committee data, the average annual price for fresh Florida tomatoes during the 2000–01 season was \$9.16 per 25-pound container or equivalent, and total fresh shipments for the 2000–01 season were 53,649,508 25-pound equivalent cartons of tomatoes. Committee data indicates that approximately 21 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 2000–01 season, and the 2000–01 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from \$0.025 to \$0.02 per 25-pound container of tomatoes. The Committee unanimously recommended 2001–02 expenditures of \$1,666,650 and an assessment rate of \$0.02 per 25-pound container. The assessment rate of \$0.02 is \$0.005 lower than the 2000–01 rate. The quantity of assessable tomatoes for the 2001–02 season is estimated at 50,000,000 25-pound cartons. Thus, the \$0.02 rate should provide \$1,000,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2001–02 fiscal year include \$700,000 for education and promotion, \$418,650 for salaries and benefits, \$320,000 for research, \$51,500 for employee retirement, and \$31,000 for office rent. Budgeted expenses for these items in 2000–01 were \$1,000,000, \$407,800, \$315,700, \$44,900, and \$24,500 for office rent, respectively.

In the past two seasons, assessments collected have exceeded budgeted expenses, primarily due to a larger than expected supply of tomatoes. This has increased the total in the reserve. In addition, the Committee voted to reduce the education and promotion budget for the 2001–02 season, reducing total recommended expenses by approximately \$300,000. The authorized reserve fund is now larger than necessary. In an effort to reduce the amount in the reserve fund and considering the reduced budget, the

Committee unanimously recommended reducing the assessment rate. The funds collected from assessments, along with money from the reserve fund will be adequate to cover the Committee's expenditures for the 2001–02 fiscal year.

The Committee reviewed and unanimously recommended 2001–02 expenditures of \$1,666,650 which included decreases in office rent, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of \$0.02 per 25-pound container of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable tomatoes, while considering other factors such as the current balance in the reserve fund. Estimated shipments of tomatoes are 50,000,000 25-pound containers for the 2001–02 fiscal year. At the recommended rate, \$1,000,000 in assessment income will be collected. This is approximately \$600,000 below the anticipated expenses, which the Committee determined to be acceptable, in view of its goal of reducing its operating reserve.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2001–02 season could range from \$4.25 and \$13.53 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 2001–02 season as a percentage of total grower revenue could range between 1.5 and 4.7 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 September 6, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

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.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber 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, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2001–02 fiscal period began on August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable tomatoes beginning with the 2001–02 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### 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 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

**§ 966.234 Assessment rate.**

On and after August 1, 2001, an assessment rate of \$0.20 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: November 5, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01–28203 Filed 11–8–01; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 993**

[Docket No. FV01–993–3 FR]

**Dried Prunes Produced in California; Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate from \$2.00 to \$2.80 per ton of salable dried prunes established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2001–02 and subsequent crop years. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** November 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Assistant or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the “order.” The marketing agreement and order are 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 Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 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 increases the assessment rate established for the Committee for the 2001–02 and subsequent crop years from \$2.00 per ton to \$2.80 per ton of salable dried prunes.

The California dried prune marketing 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 and handlers of California dried prunes. 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 1999–2000 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year 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 June 28, 2001, and unanimously recommended 2001–02 expenditures of \$403,200 and an assessment rate of \$2.80 per ton of salable dried prunes. In comparison, last year’s budgeted expenditures were \$388,000. The recommended assessment rate of \$2.80 per ton is \$.80 higher than the rate currently in effect. The \$0.80 per ton increase in the assessment rate will allow the Committee to meet its 2001–02 expenses. The primary reason for the increased assessment rate is an estimated reduction in 2001–02 crop year production. The Committee estimates a 150,000 ton crop during the 2001–02 crop year. A total of 6,000 tons are not expected to be salable because of size or quality, leaving a balance of 144,000 salable tons. This is a 28 percent decrease in salable tonnage from last year and caused the Committee to recommend increasing its assessment rate to meet expenses.

The following table compares major budget expenditures recommended by the Committee on June 28, 2001, and major budget expenditures in the revised 2000–01 budget recommended on April 5, 2001.