

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum and who, during the period August 1, 2006 through July 31, 2007 (which has been determined to be a representative period), have been engaged within the production area in the production of onions for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of onions in the production area.

#### Order Relative to Handling of Onions Grown in South Texas

*It is therefore ordered,* That on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of proposals contained in Material Issue numbers 2 and 5 of the proposed order amending the order contained in the Recommended Decision issued by the Administrator on March 29, 2007, and published in the **Federal Register** on April 6, 2007, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by amending part 959 as follows:

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Add a new paragraph (e) to § 959.42 to read as follows:

#### § 959.42 Assessments.

\* \* \* \* \*

(e) If a handler does not pay assessments within the time prescribed by the committee, the assessment may be increased by a late payment charge and/or an interest rate charge at

amounts prescribed by the committee with approval of the Secretary.

■ 3. In § 959.84, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

#### § 959.84 Termination.

\* \* \* \* \*

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance is favored by producers. The Secretary would consider termination of this part if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of onions represented in the referendum favor continuance.

\* \* \* \* \*

Dated: February 26, 2008.

Lloyd C. Day,

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–3944 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. AMS–FV–07–0014; FV07–966–2 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Florida Tomato Committee (Committee) for the 2007–08 and subsequent fiscal periods from \$0.035 to \$0.0325 per 25-pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* March 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Marketing Specialist or Christian D. Nissen,

Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (863) 324–3375, *Fax:* (863) 325–8793, or *E-mail:* [William.Pimental@usda.gov](mailto:William.Pimental@usda.gov) or [Christian.Nissen@usda.gov](mailto:Christian.Nissen@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *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 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.”

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, 2007, 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. 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 rule continues in effect the action that decreased the assessment rate established for the Committee for the 2007–08 and subsequent fiscal periods from \$0.035 per 25-pound carton to \$0.0325 per 25-pound carton 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 2006–07 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 23, 2007, and unanimously recommended 2007–08 expenditures of \$2,101,000.00 and an assessment rate of \$0.0325 per 25-pound carton of tomatoes. In comparison, last year's budgeted expenditures were \$2,193,700. The assessment rate of \$0.0325 is \$0.0025 lower than the rate previously in effect. Last season the industry shipped 2.6 million 25-pound cartons more than the Committee had anticipated, providing greater revenues than expected from assessments. The Committee's 2006–07 expenses were \$200,000 less than budgeted, and they utilized less from reserves than anticipated. The Committee also recommended a reduced budget for 2007–08. Therefore, the Committee voted to recommend a reduced assessment rate.

The major expenditures recommended by the Committee for the 2007–08 year include \$900,000 for education and promotion, \$467,000 for salaries, \$320,000 for research, and \$71,000 for employee retirement. Budgeted expenses for these items in 2006–07 were \$1,000,000, \$445,900, \$320,000, and \$67,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses, less carry-in and reserve revenues totaling \$476,000, by expected shipments of Florida tomatoes. Tomato shipments for the year are

estimated at 50 million 25-pound cartons, which should provide \$1,625,000 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 approximately \$780,000) will be kept within the maximum permitted by § 966.44 of the order, which states that excess funds cannot exceed one fiscal period's expenses.

The assessment rate 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. 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 2007–08 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), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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.

There are approximately 100 producers of tomatoes in the production area and approximately 70 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 \$6,500,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2006–07 season was approximately \$7.69 per 25-pound container, and total fresh shipments for the 2006–07 season were 52,505,687 25-pound cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 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 2007–08 and subsequent fiscal periods from \$0.035 to \$0.0325 per 25-pound carton of tomatoes. The Committee unanimously recommended 2007–08 expenditures of \$2,101,000 and an assessment rate of \$0.0325 per 25-pound carton. The assessment rate of \$0.0325 is \$0.0025 lower than the 2006–07 rate. The quantity of assessable tomatoes for the 2007–08 season is estimated at 50 million 25-pound cartons. Thus, the \$0.0325 rate should provide \$1,625,000 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 2007–08 year include \$900,000 for education and promotion, \$467,000 for salaries, \$320,000 for research, and \$71,000 for employee retirement. Budgeted expenses for these items in 2006–07 were \$1,000,000, \$445,900, \$320,000, and \$67,000, respectively.

Last season the industry shipped 2.6 million 25-pound cartons more than the Committee had anticipated, providing greater revenues than expected from assessments. The Committee's 2006–07 expenses were \$200,000 less than budgeted, and they utilized less from reserves than anticipated. The Committee also recommended a reduced budget for 2007–08. Therefore,

the Committee voted to recommend a reduced assessment rate.

The Committee reviewed and unanimously recommended 2007–08 expenditures of \$2,101,000, which included a decrease in the education and promotion budget. 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 \$0.0325 per 25-pound carton of assessable tomatoes was then determined by dividing the total recommended budget, less carry-in and reserve revenues totaling \$476,000, by the quantity of tomatoes, estimated at 50 million 25-pound cartons for the 2007–08 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming 2007–08 fiscal period indicates that the grower price for the 2007–08 season could range between \$3.89 and \$16.05 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.8 percent.

This action 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 23, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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.

An interim final rule concerning this action was published in the **Federal Register** on November 15, 2007 (72 FR 64123). Copies of that rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended January 14, 2008, and no comments 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/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.

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

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

#### PART 966—TOMATOES GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 966 which was published at 72 FR 64123 on November 15, 2007, is adopted as a final rule without change.

Dated: February 25, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–3801 Filed 2–28–08; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

RIN 3150–A132

#### Delegated Authority To Order Use of Procedures for Access to Certain Sensitive Unclassified Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is amending its rules of practice to delegate authority to the Office of the Secretary of the Commission to issue orders requiring the use of certain procedures for access to sensitive unclassified information in adjudicatory proceedings. The NRC is also making available final procedures that would allow potential parties to NRC adjudications to gain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI).

**DATES:** The effective date of the final rule is March 31, 2008. The implementation date of the procedures is March 31, 2008. If the procedures will be applied in a particular proceeding, the Commission will include them by order in the associated **Federal Register** notice of hearing or a notice of opportunity for hearing.

**FOR FURTHER INFORMATION CONTACT:** Tison Campbell, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–8579, e-mail [tison.campbell@nrc.gov](mailto:tison.campbell@nrc.gov).

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

The ADAMS accession number for the procedures is ML080380626; the ADAMS accession number for the response to public comments is ML080380633.

#### SUPPLEMENTARY INFORMATION:

I. Background