

research, marketing research, market development, and promotion activities, including paid advertising. The research and promotion programs are all currently active. Finally, the order authorizes collection and dissemination of information for the benefit of the industry. Funds to administer the order are obtained from assessments levied against all product handled under the order.

This order has a history of regulations that includes minimum grade and size, and mandatory inspection. Current industry practices have moved beyond the need for these regulations. However, the order contains the authority for these provisions should they ever be necessary to enforce again.

Regarding complaints or comments received from the public concerning the order, AMS received three comments, one from a pear handler, one from the FPC, and one from the PPC. All comments were supportive of the order and addressed each of the five factors under consideration by AMS. Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committees and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order.

The order was established in August 1939 to regulate the winter pear varieties. During the 69 years the order has been in effect, AMS and the Oregon-Washington pear industry have continuously monitored its operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to assure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committees meet once or twice a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration.

In 1961, the order was redesignated from 7 CFR 939 to 7 CFR 927. In 1986, the title of the order was simplified, by changing it from "Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairegeau Varieties of Pears Grown in the States of Oregon, Washington, and California" to "Winter Pears Grown in Oregon, Washington, and California". This action allowed more varieties to be included under the order.

Additional order improvements have included a redefinition of the production area and a consolidation of orders. In 1997, California growers and handlers were removed from the order and agreement at their request since the harvesting and marketing seasons for California pears are different than those for pears grown in Oregon and Washington. The most recent major amendments occurred in 2005 to consolidate the order with Marketing Order No. 931, Fresh Bartlett Pears Grown in Oregon and Washington. The title changed again, becoming "Pears Grown in Oregon and Washington."

Based on the potential benefits of the order to growers, handlers, processors, and consumers, AMS has determined that the Oregon-Washington pear marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The collection, compilation, and dissemination of information has provided growers, handlers, and processors with tools to assist them in making production and marketing decisions.

Numerous activities and projects undertaken by the Committees have allowed growers to earn higher revenues and reduce the cost of production. The minimum quality regulation of fresh Beurre D'Anjou pear shipments has benefited growers, handlers, and most importantly, consumers. AMS will continue to work with the Oregon-Washington pear industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. AMS-FV-08-0009; FV08-966-610 Review]

#### Tomatoes Grown in Florida; Section 610 Review

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 966, regulating the handling of tomatoes grown in Florida (order). AMS has determined that the order should be continued.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). A copy of the review may also be obtained via the Internet at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

William G. Pimental or Christian D. Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Winter Haven, Florida 33884; 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).

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 966, as amended (7 CFR part 966), regulates 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."

The order establishes the Florida Tomato Committee (Committee) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Committee consists of 12 grower members representing four districts. Each member has an alternate. Members and alternate members are elected through nomination meetings held in each district.

Currently, there are approximately 100 producers and approximately 70 handlers of Florida tomatoes. The majority of growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 966, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. While no comments were received in response to the notice, AMS had also published a notice of review in the June 24, 2002, issue of the **Federal Register** (67 FR 42530), as part of a previous schedule, and one written comment in support of the order was received. The comment is referenced in the AMS analysis below.

The review was undertaken to determine whether the order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes grade, size, quality, maturity, and pack and container regulations, as well as research and promotion, and reporting and inspection requirements. The order also authorizes the Committee to establish marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. Finally, the order authorizes the collection and dissemination of information for the benefit of the industry. The grade, size, maturity, and inspection regulations are also applied

to imported tomatoes under section 608e of the Act.

The grade, size, and maturity requirements have helped maintain demand for Florida tomatoes over the years by ensuring only quality product reaches the consumer. The compilation and dissemination of aggregate statistical information collection from handlers is used by the industry to make informed production and marketing decisions. Funds to administer the order are obtained from handler assessments.

Regarding complaints or comments received from the public concerning the order, USDA received no comments as a result of the notice of review published on March 18, 2008. However, one comment was received from the then chairperson of the Committee in response to a separate notice of review published in the **Federal Register** on June 24, 2002 (67 FR 42530). In the comment, the commenter noted that the order has contributed significantly to the success of the Florida tomato industry. He attributes dramatically increased yields to research authorized under the order, while crediting the marketing aspects of the order with contributing to the increase in consumption of fresh tomatoes. He also states that the most important aspect of the order has been its stabilizing effect on fresh tomato markets. The commenter believes the order has been a success in meeting the terms of the Act, and expressed his strongest support for its continuation.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order.

The order was established in 1955 and was last amended in July 1986. During the 53 years the order has been effective, AMS and the Florida tomato industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to ensure that the order and the regulations

implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets several times a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration.

Based on the potential benefits of the order to producers, handlers, and consumers, AMS has determined that the Florida tomato marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The order's regulations on grade, size, quality, maturity, and pack, as well as research and promotion, and reporting requirements continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the Florida tomatoes industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. AMS–FV–08–0010; FV08–984–610 Review]

#### Walnuts Grown in California; Section 610 Review

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 984, regulating the handling of walnuts grown in California (order). AMS has determined that the order should be continued.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,