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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. AMS-FV-08-0081; FV08-966-1 FR]

#### Tomatoes Grown In Florida; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Florida Tomato Committee (Committee) for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 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:* January 12, 2009.

**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 final 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.”

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 on August 1, 2008, 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 increases the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 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 2007–08 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 14, 2008, and unanimously recommended 2008–09 expenditures of \$2,438,200 and an assessment rate of \$0.0375 per 25-pound carton of tomatoes. In comparison, last year’s budgeted expenditures were \$2,101,000. The assessment rate of \$0.0375 is \$0.005 higher than the rate currently in effect. The assessment increase is needed to offset the 2008–09 increase in education and promotion expenses, salaries, and employee retirement. Without the increase in the assessment rate, the Committee will need to utilize an additional \$250,000 from the authorized reserve. Therefore, the Committee voted to increase the assessment rate.

The major expenditures recommended by the Committee for the 2008–09 year include \$1,200,000 for education and promotion, \$505,500 for salaries, \$320,000 for research, and \$77,000 for employee retirement. Budgeted expenses for these items in 2007–08 were \$900,000, \$467,000, \$320,000, and \$71,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses, less anticipated funds from the USDA Market Access Program (MAP), by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million 25-pound cartons and should provide \$1,875,000 in assessment income.

Income derived from handler assessments, along with interest income, MAP funds, and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently approximately \$593,000) will be kept within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44 of the order.

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 will be in effect 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 2008–09 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 (5 U.S.C. 601–612) (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 (SBA) as those having annual receipts less than

\$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2007–08 season was approximately \$13.71 per 25-pound container, and total fresh shipments for the 2007–08 season were 45,177,457 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 increases the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 per 25-pound carton of tomatoes. The Committee unanimously recommended 2008–09 expenditures of \$2,438,200 and an assessment rate of \$0.0375 per 25-pound carton. The assessment rate of \$0.0375 is \$0.005 higher than the 2007–08 rate. The quantity of assessable tomatoes for the 2008–09 season is estimated at 50 million 25-pound cartons. Thus, the \$0.0375 rate should provide \$1,875,000 in assessments. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, and other income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2008–09 year include \$1,200,000 for education and promotion, \$505,500 for salaries, \$320,000 for research, and \$77,000 for employee retirement. Budgeted expenses for these items in 2007–08 were \$900,000, \$467,000, \$320,000, and \$71,000, respectively.

The assessment increase is needed to offset the 2008–09 increase in education and promotion expenses, salaries, and employee retirement. Without the increase in the assessment rate, the Committee would need to utilize an additional \$250,000 from the authorized reserve. Therefore, the Committee voted to increase the assessment rate.

The Committee reviewed and unanimously recommended 2008–09 expenditures of \$2,438,200, which

included increases in education and promotion, salaries, and employee retirement. 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 education and promotion projects to the tomato industry. The assessment rate of \$0.0375 per 25-pound container of assessable tomatoes was determined by examining the anticipated expenses, expected shipments, MAP funds, and available reserves. The recommended assessment rate should generate \$1,875,000 in income. Considering income from assessments, interest, and other sources, total income will be approximately \$27,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2008–09 fiscal period indicates that the grower price for the 2008–09 season could range between \$7.98 and \$12.95 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2008–09 season as a percentage of total grower revenue could range between 0.3 and 0.5 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. 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 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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.

A proposed rule concerning this action was published in the **Federal Register** on October 20, 2008 (73 FR 62218). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and Florida tomato handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending November 19, 2008, was provided for interested persons to respond to the proposal. 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving tomatoes from the 2008–09 crop, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such period. In addition, the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed 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, 2008, an assessment rate of \$0.0375 per 25-pound carton is established for Florida tomatoes.

Dated: January 5, 2009.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–174 Filed 1–8–09; 8:45 am]

**BILLING CODE 3410–02–P**

#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 1

##### Federal Civil Penalties Inflation Adjustment Act

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Final rule amendments.

**SUMMARY:** The FTC is making adjustments to certain civil penalty amounts within its jurisdiction, as required by law. These adjustments reflect inflation since the penalty amounts were last adjusted.

**EFFECTIVE DATE:** February 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kathleen R. Johnson, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2869, [kjohnson2@ftc.gov](mailto:kjohnson2@ftc.gov).

**SUPPLEMENTARY INFORMATION:** As required at least once every four years by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 31001(s)(1), 110 Stat. 1321-373, the FTC is making certain regulatory adjustments to civil penalty amounts within its jurisdiction. The civil penalty amounts adjusted by the FTC are set forth in Commission Rule 1.98, 16 CFR 1.98. The FTC published the original adjustments in 1996. *See* 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). No adjustments were warranted under the law in 2000. *See* 65 FR 69665 (Nov. 20, 2000). The FTC published adjustments to civil penalties under the Clayton Act section 11(l) and the Energy Policy and

Conservation Act section 525(a) in 2004. *See* 69 FR 76611 (Dec. 22, 2004).

Adjustments are based on the increase in the Consumer Price Index (CPI) between June of the year in which the prior adjustment was made and June of the year preceding the year in which the adjustment is being made. Thus, for civil penalties adjusted in 2004, the relevant CPI period is between June, 2004 and June, 2007. Within that time frame, the CPI has increased from 189.7 to 208.352, or 9.8%. Applying this percentage increase to currently adjusted civil penalty amounts, the FTC is adjusting civil penalty amounts currently set at \$6,500 under two statutes: the Clayton Act section 11(l), for violations of cease-and-desist orders issued under section 11(b) of that Act; and section 525(a) of the Energy Policy and Conservation Act, for recycled oil labeling violations. Each will be adjusted to \$7,500, in accordance with the rounding rules of the adjustment statute.

For civil penalties that were last adjusted in 1996, the relevant CPI period is between June, 1996 and June, 2007. During this period, the CPI increased from 156.7 to 208.352 for a total percentage increase of 32.96%. Applying this percentage increase to the civil penalties as they were adjusted in 1996 results in an increase from \$11,000 to \$16,000 for civil penalties in the following statutes: premerger notification violations under the Hart-Scott-Rodino Antitrust Improvements Act section 7A(g)(1), unfair or deceptive acts or practices under the FTC Act sections 5(l), (m)(1)(A) and (m)(1)(B), and energy conservation violations under the Energy Policy and Conservation Act section 525(b). Further, applying the CPI increase to credit reporting violations under the Fair Credit Reporting Act section 621(a)(2) raises that penalty amount from \$2,500 to \$3,500.

The FTC is amending Commission Rule 1.98 by modifying paragraphs (a) through (e), (l) and (m) and adding paragraph (n) to reflect these adjustments, which will become effective thirty days following publication.

The FCPIAA rounding rules do not authorize the FTC at this time to increase the amounts of the other civil penalties within its jurisdiction. Increases in civil penalties of greater than \$100 and less than or equal to \$1,000 must be in \$100 increments, and the increase in the CPI was not high enough to round up any adjustment to \$100. Accordingly, all other paragraphs of Commission Rule 1.98 remain unchanged.