

revenue would, thus, be \$9,000. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This rule continues in effect the suspension of the grade, inspection, and related reporting requirements under the order's rules and regulations. As a result, the suspension of §§ 928.150, 928.152, and 928.313 in their entirety is continued, and the amendment of § 928.160 is continued to remove the reference to mandatory regulations and the requirement that the inspection certificate number be added to the utilization reports filed by handlers.

At the meeting, the committee discussed the impact of these changes on handlers and producers in terms of cost. Since mandatory inspection and certification costs are borne by handlers, the cost savings to each handler are estimated to be a total \$24.24 per hour for on-site inspections. In addition, the inspection service charges mileage costs of \$.37 per mile round trip from the inspection service office to the handler's premises or processing plant. According to the inspection service, for a trip taking 10 or more minutes, or covering 7 or more miles, the travel time cost is based on the \$24.24 hourly rate. Some handlers could pass the inspection costs onto producers, thus, further decreasing overall producer returns. These costs do not apply in the absence of minimum quality requirements and associated mandatory inspection.

During its deliberations, the committee discussed possible alternatives to this action. They deliberated the impacts of the final rule taking effect on January 2, 2001. However, because economic conditions in the papaya industry are currently at a historically low level, the committee rejected that alternative.

The committee also debated the value of suspending, rather than postponing, the regulations in their entirety. That alternative, however, was also rejected, as the committee felt suspension of the regulations was too drastic an action to take at the time. Instead, the committee proposed postponing the effective date of the requirements until July 1, 2001, and further reviewing the conditions within the industry at that time. The requirements were originally suspended beginning on July 1, 1994.

However, as noted earlier, the Department has determined that the suspension of the requirements is preferable and continues in effect, given the current industry conditions and likelihood that there will be no substantial improvement in the next several months. If industry conditions

improve, implementation of the quality control program could again be recommended by the committee. Accordingly, this action will have a favorable effect on both large and small entities.

This rule continues in effect the relaxation of reporting requirements under the order, since PAC Form 1 will no longer require the addition of the inspection certificate number on it. In addition, PAC Forms 7 and 7(c) will not be required from handlers wishing to be approved handlers of immature papayas. In the absence of mandatory inspection, no handlers will be required to apply for approval to handle immature papayas using PAC Form 7 nor report shipments of immature papayas to the committee using PAC Form 7(c). This rule will decrease the burden by 9.25 hours.

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

In addition, the committee's meetings were widely publicized throughout the papaya industry and all interested persons were encouraged to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the December 28, 2000, and the subsequent January 11, 2001, meetings were public meetings and all entities, both large and small, were encouraged to express views on this issue. The committee itself is comprised of 13 members, consisting of nine producer members and three handlers members. The committee also includes a public member who does not represent an agricultural interest nor have a financial interest in papayas.

An interim final rule concerning this action was published in the **Federal Register** on May 30, 2001. Copies of the rule were mailed by the committee's staff to all committee members and papaya handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 30, 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 matters presented, including the information and recommendation submitted by the committee and other

available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (66 FR 29216, May 30, 2001) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

#### PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the interim final rule amending 7 CFR part 928, which was published at 66 FR 29216 on May 30, 2001, is adopted as a final rule without change.

Dated: September 17, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-23652 Filed 9-20-01; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV01-966-1 FR]

#### Tomatoes Grown in Florida; Changes to the Handling Regulation for Producer Field-Packed Tomatoes

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes the requirements currently prescribed for producer field-packed tomatoes under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This rule removes the net weight and weight labeling exemptions for producer field-packed tomatoes. Producer field-packed tomatoes compete directly with packinghouse tomatoes that must meet the net weight requirement. This change requires all tomatoes, regardless of where they are packed, to meet the same net weight requirements so that these requirements are the same for producer field-packed tomatoes and packinghouse tomatoes.

**EFFECTIVE DATE:** This final rule becomes effective September 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883; 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, PO 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, PO 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 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 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 the Secretary 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 the Secretary 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 the Secretary'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 final rule removes the net weight exemption currently prescribed for producer field-packed tomatoes under the Florida tomato marketing order. The Committee recommended this change at its meeting on February 27, 2001, with a vote of eight in favor and two opposed.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of 2<sup>9</sup>/<sub>32</sub> inches in diameter. Current pack and container requirements outline the types of information that need to appear on a container, weight restrictions, and where the containers must be packed.

Section 966.52 of the Florida tomato marketing order provides authority for the issuance of regulations. This includes authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order.

Section 966.323 contains the handling regulations issued under the order. Section 966.323(a)(3)(i) requires that tomatoes packed by registered handlers be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight of a container's contents cannot be less than the designated net weight or exceed the designated net weight by more than two pounds. Section 966.323(a)(3)(ii) requires that tomatoes be packed by registered handlers in containers that are marked with the designated net weight and with the name and address of the registered handler, and that such containers must be packed at the registered handler's facilities.

Section 966.323(d)(1) contains exemptions to the regulations. The section currently exempts producer field-packed tomatoes from the container net weight requirements and the requirement that each container or lid be marked to indicate the designated net weight. It also exempts producer field-packed tomatoes from the requirement that all containers must be packed at a registered handler's facilities. However, field-packed tomatoes still must meet the other requirements of the marketing order, including established grade, size, container, pack, and inspection requirements.

This rule removes the net weight and weight labeling exemptions for producer field-packed tomatoes. This change

requires all tomatoes, unless specifically granted an exemption, to meet the same net weight requirements regardless of where they are packed.

Producer field-packed tomatoes are tomatoes which at the time of inspection are No. 3 color or higher (according to color classification requirements in the U.S. tomato standards), that are picked and place packed in new containers in the field by a producer as defined in § 966.150 of the rules and regulations. The tomatoes are then transported to a registered handler's facilities for final preparation for market and for inspection.

Producer field-packed tomatoes are picked by hand and place packed in containers in layers. When place packing a container of tomatoes, the fill is determined by the size of the tomato, dimensions of the container, and the way the tomatoes are positioned in the box. Each layer is tightly packed by rotating the tomatoes and by the size selection of the tomatoes. Each 25-pound container usually has three to four layers of tomatoes.

Most tomatoes from Florida are packed and shipped at the mature green stage. Shipments of mature green tomatoes represented approximately 83.7 percent of total fresh shipments during the 1999-2000 season. Tomatoes are picked and packed at the mature green stage to facilitate handling. The vast majority of mature green tomatoes are packed using a mechanized process. The tomatoes are brought to the packinghouse where they are run across sizing equipment, and then are packed in volume fill containers by size and weight. At the mature green stage, the tomatoes are firm and are able to withstand the packing process. This is an efficient process that facilitates packing in volume.

However, when packing a producer field-packed tomato that is more ripe and mature, the process used to pack mature greens is not as effective. This is because as the tomato begins to ripen it begins to soften. Tomatoes of No. 3 color and above cannot tolerate the rigors of the mechanized handling process. This packing process bruises and damages more mature tomatoes, increasing the volume of culls and tomatoes that fail inspection.

When the net weight exemption for producer field-packed tomatoes was established October 10, 1998 (63 FR 54556), the Committee thought that meeting the net weight requirement would be difficult without the precision of the mechanical process available at the packinghouse. Therefore, the Committee recommended establishing the net weight exemption to facilitate

the packing of field-packed tomatoes. However, after several years of experience, those packing producer field-packed tomatoes have enhanced their skill for packing tomatoes in the field. Many now pack to meet the net weight requirement even though the exemption is available.

Field-packed tomatoes are sized as either 5X6 or 6X6 and larger with no upper limit on either size. This differs from the size requirements for tomatoes packed at a packinghouse. Packinghouse tomatoes must meet a minimum and a maximum size requirement on tomatoes designated at 6X6. Because there is no upper limit on either the 5X6 or 6X6 sized field-packed tomatoes, handlers have more flexibility to add and remove tomatoes of different sizes in order to meet a specified weight requirement without compromising their ability to meet the size requirement. Handlers can replace larger tomatoes with smaller ones and vice versa in order to adjust box weight to meet the net weight requirements. In its discussion, the Committee stated that most handlers of producer field-packed tomatoes are voluntarily meeting the 25-pound net weight requirements.

It also found that some handlers have started using the net weight exemption as a marketing tool. The Committee stated that producer field-packed tomatoes packed in containers designed to hold a 25-pound designated net weight were being presented for sale with weights of 28 to 32 pounds. The net weight requirement only allows packinghouses to put between 25 and 27 pounds of tomatoes to a box. Some handlers of producer field-packed tomatoes are adding additional tomatoes to the containers to create a marketing advantage over those handlers required to meet the net weight requirements. Buyers prefer the additional weight in containers of field-packed tomatoes to packinghouse tomatoes because they are getting more tomatoes for their money.

In its discussions, Committee members stated that over packing containers is a poor marketing practice. Selling a container of tomatoes that weighs more than 25 pounds at the price for a 25-pound container has a price depressing effect on the market, and reduces returns to growers. It was also noted that the marketing order was put in place to create an orderly market for all tomatoes grown in Florida because the market at that time was in such disarray. The net weight was established to provide an industry standard and give buyers and sellers a uniform point of comparison. With the volume of producer field-packed tomatoes increasing, several Committee

members stated that continuing with the net weight exemption for field-packed tomatoes was taking a step backwards in terms of orderly marketing.

In addition, there was also concern regarding the possibility that damaged tomatoes could reach the market. Committee members stated that when a 25-pound box of tomatoes is filled to exceed a 27-pound net weight, there is an increased chance that tomatoes will be crushed when placing the lid on the container. Overfilling could also result in fruit being damaged during shipment.

The market for red, vine-ripe tomatoes has grown over the past few years. The Committee now estimates that between five and fifteen percent of the total daily fresh tomato shipments from Florida are producer field-packed tomatoes. This is a one to two percent increase from last season. Retailers consider the fast growing market for red, vine-ripe tomatoes to be the way of the future and the Committee estimates that the volume of producer field-packed tomatoes will continue to grow in order to supply this market. Therefore, the Committee wants to continue to develop this market by providing a uniform, quality product.

To accomplish these goals, this rule removes the exemption from the net weight requirement for producer field-packed tomatoes, and requires producer field-packed tomatoes to meet the same net weight and weight labeling requirements as those packed in a packinghouse.

The two Committee members who opposed the recommendation agreed that a problem exists with the net weight exemption for producer field-packed tomatoes. However, they were not sure that the action recommended was the best solution to the problem and wanted more time to consider the issue. Therefore, they voted against the proposal.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of pack and container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulation as a result of this action.

This change will not affect the exemption for single layer and two-layer place packed tomatoes. They will continue to be exempt from the net weight requirements under the order.

Therefore, producer field-packed tomatoes place packed in single or two layer packs will continue to be exempt from the net weight requirements.

### 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 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 82 handlers of Florida tomatoes who are subject to regulation under the marketing order and approximately 100 tomato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Since the proposed rule was published, the benchmark for small producers was increased from \$500,000.

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 carton or equivalent, and total fresh shipments for the 2000–01 season were 53,649,508 25-pound equivalent cartons of tomatoes. Based on this information, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes may also be classified as small entities.

This final rule revises the handling requirements currently prescribed for producer field-packed tomatoes under § 966.323 of the order. Currently, producer field-packed tomatoes are exempt from the net weight requirements under the order. The net weight requirement only allows packinghouses to put between 25 and 27 pounds of tomatoes into a box designed to hold 25 pounds. Some handlers of producer field-packed tomatoes are adding additional tomatoes to their containers to the detriment of handlers required to meet the net weight requirements. This rule removes the exemption from the net weight

requirement for producer field-packed tomatoes and requires all tomatoes, regardless of where they are packed, to meet the same net weight requirements. Authority for this action is provided in § 966.52 of the order.

There could be some additional costs associated with this rule. Removing the net weight exemption will require those packing producer field-packed tomatoes to take the steps necessary to ensure that the tomatoes meet the net weight requirement. This could result in additional costs from the purchase of equipment to weigh the boxes and additional labor needed. However, many of those packing producer field-packed tomatoes have already incurred these costs and are meeting the net weight requirements voluntarily.

Currently, boxes containing between 28 and 32 pounds of field-packed tomatoes may be sold for the same price as a box containing 25 to 27 pounds of tomatoes. This reduces total pack out, depresses price, and reduces returns to the grower. In addition, these tomatoes are being sold into what retailers consider to be the fastest growing segment of the tomato market. Over packing boxes increases the probability that some tomatoes will be damaged. Shipping damaged tomatoes could have a negative impact on the market and the ability of Florida tomato handlers in meeting that market's needs. This rule will help counter that possibility.

This rule was recommended to benefit the Florida tomato industry. The costs or benefits of this rule will not be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this change, including making no change to the regulation. However, Committee members agreed that action needed to be taken, so this alternative was rejected. Another alternative considered was to change the size of the box for field-packed tomatoes. Some members of the Committee stated that this would not solve the problem, only add another box size, noting that handlers are already selling a 25-pound container of producer field-packed tomatoes that weighs more than 25 pounds. Changing only the size of the container would not prevent handlers from continuing to overfill the cartons. Therefore, this alternative was also rejected.

This final rule removes the exemption from the net weight requirement for producer field-packed tomatoes under the Florida tomato marketing order.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large

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, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

Further, the Committee's meeting was widely publicized throughout the 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 February 27, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 2, 2001 (66 FR 40158). Copies of the rule were mailed or sent via facsimile to all Committee members and tomato handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and the Department. A 20-day comment period ending August 22, 2001, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. The comments were from two industry groups in support of the proposed action. The points made in the comments reflected information included in the proposed rule and were thoroughly discussed prior to the Committee vote.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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 matter presented, including the information and recommendation submitted by the Committee, the comments received, 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the final rule needs to be effective by the start of the 2001–02 season, which begins October 10, 2001. Further, handlers are aware of this

rule, which was recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed rule, and two comments supporting the action were received.

#### 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 966.323 is amended by revising the last sentence of paragraph (d)(1) to read as follows:

#### § 966.323 Handling regulation.

\* \* \* \* \*

(d) *Exemption.* (1) \* \* \* Producer field-packed tomatoes must meet all of the requirements of this section except for the requirement that all containers must be packed at registered handler facilities as specified in paragraph (a)(3)(ii) of this section, and the requirement that such tomatoes designated as size 6 × 6 must meet the maximum diameter requirement specified in paragraph (a)(2)(i) of this section: *Provided*, That 6 × 6 and larger is used to indicate the listed size designation on containers.

\* \* \* \* \*

Dated: September 17, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–23648 Filed 9–20–01; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 225

#### Bank Holding Companies and Change in Bank Control (Regulation Y)

##### CFR Correction

In Title 12 of the Code of Federal Regulations, parts 220 to 299, revised as of January 1, 2001, in part 225, appendix E is corrected to read as follows: