



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 966**

[Doc. No. AMS-SC-19-0011; SC19-966-2 FR]

**Tomatoes Grown in Florida; Redistricting and  
Reapportionment of Producer Districts**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Florida Tomato Committee (Committee) to redistrict and reapportion producer representation on the Committee currently prescribed under the marketing order for tomatoes grown in Florida. This action will reduce the number of districts from four to two and reapportion producer membership on the Committee to provide equitable representation from both districts.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Steven W. Kauffman, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA;

Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Steven.Kauffman@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. Part 966 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 Committee locally administers the marketing order and is comprised of producers operating within the production area.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory

actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 final rule amends the Florida tomato districts and reapportions membership on the Committee as prescribed under the marketing order for the 2020-21 and subsequent fiscal periods. This final rule will reduce the number of districts from four to two and reapportion producer membership on the Committee to provide equitable representation from both districts. Redistricting and reapportionment of membership will make it easier for Committee staff to conduct producer nominations and ensure the appointment of a full Committee. A fully appointed Committee will make it easier to achieve a quorum for assembled meetings. The Committee unanimously recommended this change at its November 1, 2018, meeting.

Section 966.22 provides for the establishment of membership on the Committee. The 12 members and their alternates shall be producers, or officers or employees of a corporate producer, in the district for which selected

and a resident of the production area. The marketing order provides districts from which producers serve as representatives on the Committee.

Section 966.25 provides the authority for the Committee to recommend, with the approval of the Secretary, reapportionment of members among districts, and the reestablishment of districts within the production area. This section also provides that, in making such recommendations, the Committee shall give consideration to: (a) shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of Committee membership and districts; (d) economic results for producers in promoting efficient administration due to redistricting or reapportioning members within districts; and (e) other relevant factors.

Section 966.24 defined the four districts within the production area by county. Districts 1 and 2 have previously been reestablished pursuant to § 996.160. Section 966.161 apportions Committee membership among the districts pursuant to § 966.25. Currently, Districts 1 and

2 are represented by two Committee members and alternates each and Districts 3 and 4 are represented by four Committee members and alternates each.

The Committee met on November 1, 2018, to discuss the changes in recent years to production and the shift in acreage location of Florida tomatoes. Over the past two decades, the Florida tomato industry has experienced significant changes in production volume and location. Decreasing production and shifts in acreage are due to increased production costs along with competition from imports and other growing regions. The increased costs and competition has contributed to a decrease in the number of producers and handlers. With fewer producers to represent the industry and the changes to production and acreage, the Committee discussed redistricting and reapportioning its membership.

Tomato production has shifted from the eastern part of the production area in Florida (Districts 1 and 2) to the western part of the production area (Districts 3 and 4). According to Committee data, production during the 2017-18 season in District 4 accounted for 56 percent of the production area's total production. The next largest

district by production volume was District 3, accounting for 39 percent of total production. In comparison, District 1 accounted for 4 percent of total production and District 2 only 1 percent of the total volume for the production area.

According to Committee data, Districts 1 and 2 accounted for 28 percent of total production during the 1998-99 season but production had decreased to only 8 percent by the 2007-08 season. Industry production has slowly moved into Districts 3 and 4 over the last 20 years and now these two districts make up 95 percent of total production.

The shift in tomato production between districts has created an imbalance in Committee representation. The members from Districts 1 and 2 combined represent one-third of the membership on the Committee while these districts account for only 5 percent of the tomato production volume. Consequently, Districts 3 and 4 are underrepresented with only two-thirds of the Committee membership. During the discussion, Committee members reviewed acreage and production data from all districts in the production area as required in the marketing order. The gradual shift in

acreage and production from the eastern portion of the production area in Florida to the western portion has made it difficult to find enough qualified producers to represent Districts 1 and 2 on the Committee. Committee members from these two districts represent four seats on the Committee. Committee members also noted that with fewer producers remaining in the Florida tomato industry, particularly in Districts 1 and 2, it is difficult to get enough members together to satisfy the marketing order's quorum requirements for a meeting.

As a result of the discussion and analysis, the Committee recommended combining the current Districts 1, 3, and a portion of District 2 into one district, and District 4 and the remaining portion of District 2 into another district. This change will divide the production area into two districts with each district representing approximately half of the total volume of tomatoes produced in the production area. The Committee also recommended reapportioning the 12 Committee members and alternates so that six Committee members and alternates represent each district.

The two new districts will encompass the following Florida counties: District 1 will include the counties of Charlotte, Glades, Palm Beach, Lee, Hendry, Collier, Broward, Monroe, and Dade; and District 2 will include the counties of Pinellas, Hillsborough, Polk, Osceola, Brevard, Manatee, Hardee, Highlands, Okeechobee, Indian River, St. Lucie, Sarasota, De Soto, and Martin.

The Committee unanimously voted to reduce the number of districts from four to two and reapportion producer membership on the Committee so that each district will have six members and alternates. The Committee believes these changes will adjust producer representation to reflect the composition of the industry, and create the opportunity for other producers to serve on the Committee.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 businesses 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 75 producers of Florida tomatoes in the production area and 37 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 \$7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average annual price for fresh Florida tomatoes during the 2017-18 season was approximately \$12.56 per 25-pound container, and total fresh shipments were 25.9 million containers. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than \$7.5 million, (\$12.56 times 25.9 million containers equals

\$325.3 million divided by 37 handlers equals \$8.79 million per handler).

With an estimated producer price of \$6.00 per 25-pound container, the number of Florida tomato producers, and assuming a normal distribution, the average annual producer revenue is above \$750,000, (\$6.00 times 25.9 million containers equals \$155.4 million divided by 75 producers equals \$2.07 million per producer). Thus, the majority of handlers and producers of Florida tomatoes may be classified as large entities.

The gradual shift in acreage and production from the eastern portion of the production area in Florida to the western portion has made it difficult to find enough qualified producers to represent Districts 1 and 2 on the Committee. Committee members from these two districts represent one-third of the seats on the Committee. Redistricting and reapportionment of membership will make it easier for Committee staff to conduct producer nominations, provide nominees for all seats, and readily achieve a quorum when meetings are assembled with a full complement of members.

This final rule will reduce the number of districts from four to two and reapportion producer membership on the Committee to provide six members and alternates from both districts. The Committee believes these changes will adjust producer representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for other producers to serve on the Committee. This rule revises §§ 966.160 and 966.161. Authority for this action is provided in § 966.25 of the marketing order.

It is not anticipated that this action would impose any additional costs on the industry. These changes will save time and operating resources by making it easier to find candidates to serve on the Committee. Additionally, a full Committee will reduce the chance of a failed quorum. Thus, this action will help avoid the costs associated with travel and assembly of a meeting where a quorum is not achieved.

This action is expected to have a beneficial impact as it more accurately aligns districts and reapportions Committee membership in accordance with the production of fresh Florida tomatoes. These changes should provide

equitable representation to producers on the Committee and make the Committee more representative of the current industry. The effects of this rule will not be disproportionately greater or less for small entities than for larger entities.

The Committee considered an alternative to this action. The Committee considered combining Districts 1 and 2 into one district. However, given the small volume of production currently produced in each of these districts, the Committee determined the best course of action was to divide the production area into two new districts with balanced production and representation. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the marketing order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any 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 rule. No public comments were received regarding the initial regulatory flexibility analysis.

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.

The Committee's meetings were widely publicized throughout the Florida tomato industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the November 1, 2018, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the Federal Register on April 24, 2019 (84 FR 17091). Copies of the proposed rule were sent via email to Committee members and Florida tomato handlers. Additionally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 24, 2019, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower 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 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.

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. In § 966.160, revise paragraphs (a) and (b) to read as follows:

**§ 966.160 Reestablishment of districts.**

(a) District No. 1: The counties of Charlotte, Glades, Palm Beach, Lee, Hendry, Collier, Broward, Monroe, and Dade in the State of Florida.

(b) District No. 2: The counties of Pinellas, Hillsborough, Polk, Osceola, Brevard, Manatee, Hardee, Highlands, Okeechobee, Indian River, St. Lucie, Sarasota, De Soto, and Martin in the State of Florida.

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3. Revise § 966.161 to read as follows:

**§ 966.161 Reapportionment of Committee Membership.**

Pursuant to § 966.25, industry membership on the Florida Tomato Committee shall be reapportioned as follows:

- (a) District 1—six members and their alternates.
- (b) District 2—six members and their alternates.

Dated: September 17, 2019

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

BILLING CODE 3410-02 P

[FR Doc. 2019-20452 Filed: 9/25/2019 8:45 am; Publication Date: 9/26/2019]