

TABLE 2.—UNIT RATES SERVICE ¹—Continued

(c) Milled rice	29.30
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	36.60
(b) All other factors (per factor) (all rice)	17.60
Total oil and free fatty acid	57.20
Interpretive line samples: ²	
(a) Milling degree (per set)	124.90
(b) Parboiled light (per sample)	30.60
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request) ³	
(a) Ship (per stowage space) (minimum \$252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) (minimum \$151.50 per ship)	50.50
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50

¹ Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

² Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153-1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, DC 20250-3630 or from the GIPSA Web site (<http://www.gipsa.usda.gov>). The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

³ If performed outside of normal business hours, 1½ times the applicable unit fee will be charged.

James E. Link,
Administrator, Grain Inspection, Packers and Stockyards Administration.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS-FV-06-0190; FV06-966-2 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 2006-07 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon Florida 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 18, 2007.

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 or 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.

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."

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 August 1, 2006, 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 2006-07 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container or equivalent of tomatoes handled.

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 and handlers 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 2003–04 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 22, 2006, and unanimously recommended 2006–07 expenditures of \$2,193,700 and an assessment rate of \$0.035 per 25-pound container or equivalent of tomatoes. In comparison, last year's budgeted expenditures were \$2,161,800. The assessment rate of \$0.035 is \$0.01 higher than the rate currently in effect. The increase in the assessment rate is needed to continue to support the increased budget for advertising and promotion started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase in the assessment rate, the Committee would need to utilize an additional \$500,000 from the authorized reserve.

The major expenditures recommended by the Committee for the 2006–07 fiscal period include \$1,000,000 for education and promotions, \$445,900 for salaries, \$320,000 for research, \$67,000 for employee retirement, and \$63,800 for employee health insurance. Budgeted expenses for these items in 2005–06 were \$1,000,000, \$428,000, \$320,000, \$65,000 and \$63,800, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million which should provide \$1,750,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently around \$700,000) will be kept within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44.

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 2006–07 budget and those for subsequent fiscal periods would 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 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. Thus, both statutes have small entity orientation and compatibility.

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 \$6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2005–06 season was approximately \$10.27 per 25-pound container or equivalent, and total fresh shipments for the 2005–06 season were 47,880,303 25-pound equivalent 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 annual price of \$10.27 per 25-pound container, about

75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production, 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 2006–07 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container or equivalent of tomatoes. The Committee unanimously recommended 2006–07 expenditures of \$2,193,700 and an assessment rate of \$0.035 per 25-pound container. The assessment rate of \$0.035 is \$0.01 higher than the 2005–06 rate. The quantity of assessable tomatoes for the 2006–07 season is estimated at 50 million cartons. Thus, the \$0.035 rate should provide \$1,750,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2006–07 fiscal period include \$1,000,000 for education and promotions, \$445,900 for salaries, \$320,000 for research, \$67,000 for employee retirement, and \$63,800 for employee health insurance. Budgeted expenses for these items in 2005–06 were \$1,000,000, \$428,000, \$320,000, \$65,000, and \$63,800, respectively.

As previously mentioned, the number of assessable containers during 2006–07 is estimated to be 50 million and the recommended assessment rate should generate \$1,750,000 in income. The Committee's financial reserve is now estimated to be \$700,000 and is available to cover the deficit in assessment income. The increase in the assessment rate is needed to continue to support the increased budget for advertising and promotion started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase in the assessment rate, the Committee would need to utilize an additional \$500,000 from the authorized reserve.

The Committee reviewed and unanimously recommended 2006–07 expenditures of \$2,193,700 which included increases in administrative and office salaries. 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 \$0.035 per 25-pound container of assessable tomatoes was determined by examining the anticipated expenses and expected shipments and considering available reserves. The assessment rate should generate \$1,750,000 in income. Considering income from interest and other sources of \$190,000, with assessments, total income should be approximately \$253,700 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2006–07 season could range between \$8.27 and \$12.95 per 25-pound container or equivalent of tomatoes. Therefore, the estimated assessment revenue for the 2006–07 fiscal period as a percentage of total grower revenue could range between 0.3 and 0.4 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 22, 2006, 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.

The 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.

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

A proposed rule concerning this action was published in the **Federal Register** on November 16, 2006 (71 FR 66702). Copies of the proposed rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending December 1, 2006, 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/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.

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: (1) The 2006–07 fiscal period began on August 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida tomatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past fiscal periods. Also, a 15-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, 2006, an assessment rate of \$0.035 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: January 11, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–149 Filed 1–11–07; 4:45 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FVO6–966–1 FR]

Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides a partial exemption to the minimum grade requirements under the marketing order for tomatoes grown in Florida (order). The Florida Tomato Committee (Committee) locally administers the order. Under the order, Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule exempts UglyRipe™ (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet the order requirements, and will help increase shipments and availability of these tomatoes for consumers.

EFFECTIVE DATE: This final rule becomes effective January 18, 2007.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, or Christian 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, or 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.