

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV96-966-1 FIR]

#### Tomatoes Grown in Florida; Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Florida Tomato Committee (Committee) under Marketing Order No. 966 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of tomatoes grown in Florida.

Authorization to assess Florida tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**EFFECTIVE DATE:** August 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Assistant, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770; FAX 941-299-5169, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington,

DC 20090-6456; telephone 202-720-2491; FAX 202-720-5698.

**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 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 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 Florida tomatoes beginning August 1, 1996, and continuing 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 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. Such 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.

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.

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 90 producers of Florida tomatoes in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The Florida tomato marketing order provides authority for the Committee, with the approval of the Department, 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.

The Committee met on September 5, 1996, and unanimously recommended 1996-97 expenditures of \$1,189,000 and an assessment rate of \$0.03 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were \$2,025,000. The assessment rate of \$0.03 is \$0.01 less than last year's established rate. Major expenditures recommended by the Committee for the 1996-97 fiscal period compared to those budgeted for 1995-96 (in parentheses) include: \$500,000 for education and promotion (\$1,225,000), \$5,000 for miscellaneous promotion (\$5,000), \$284,650 for office salaries (\$319,100), \$180,000 for research (\$245,000), \$45,500 for employees' retirement program (\$50,500), \$30,000 for employees' travel (\$30,000), \$24,500

for office rent (\$24,500), \$22,150 for payroll taxes (\$22,150), \$20,000 for employees' health insurance (\$29,500), \$19,150 for depreciation on the office furniture and automobiles (\$19,000), \$14,000 for communications (\$12,000), \$12,000 for Committee member travel (\$12,000), \$9,000 for supplies and printing (\$8,500), \$8,000 for insurance and bonds (\$8,000), and \$7,000 for postage (\$7,000).

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 40,000,000 25-pound containers which should provide \$1,200,000 in assessment income, which will be adequate to cover projected expenses.

An interim final rule regarding this action was published in the November 29, 1996, issue of the Federal Register (61 FR 60510). That rule provided for a 30-day comment period. No comments were received.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 is 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (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 years; and (4) an interim final rule was published on this action and provided for a 30-day comment period; no comments 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:

Note: This action will appear in the Code of Federal Regulations.

### **PART 966—TOMATOES GROWN IN FLORIDA**

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 61 FR 60510 on November 29, 1996, is adopted as a final rule without change.

Dated: February 10, 1997.

Robert C. Keeney

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-3793 Filed 2-13-97; 8:45 am]

**BILLING CODE 3410-02-P**

### **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **12 CFR Part 335**

**RIN 3064-AB79**

#### **Securities of Nonmember Insured Banks**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is revising its regulations which prescribe registration and reporting requirements for non-member insured banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The final rule incorporates through cross reference the corresponding regulations of the Securities and Exchange Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation through cross reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

**DATES: Effective date.** These revisions are effective January 1, 1998, with the exception of § 335.901, which is effective July 1, 1997.

**Early compliance.** These revisions may be immediately followed by the affected party, except that the SEC's regulation regarding proposals of security holders (17 CFR 240.14a-8), which is cross referenced in § 335.401 may not be followed prior to January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** M. Eric Dohm, Staff Accountant, Division of Supervision (202-898-8921), Lawrence H. Pierce, Securities Activities Officer, Division of Supervision (202-898-8902), or Jamey G. Basham, Counsel, Legal Division (202-898-7265), Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 12(i) of the Securities Exchange Act of 1934 as amended, 15 U.S.C. 78l(i), grants authority to the FDIC to issue regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (collectively referred to as nonmember banks), which are substantially similar to the SEC's regulations under sections 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (election of directors contests), and 16 (beneficial ownership and reporting) of the Exchange Act. Section 12(i) does not, however, require the FDIC to issue substantially similar regulations in the event that the FDIC finds that implementation of such regulation is not necessarily in the public interest or appropriate for protection of investors