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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV99-966-1 IFR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Florida Tomato Committee (Committee) for the 1999-2000 and subsequent fiscal periods from \$0.03 per 25-pound container to \$0.025 per 25-pound container of tomatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: October 26, 1999. Comments received by December 27, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in

the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (941) 299-4770, Fax: (941) 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) 720-5698. 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) 720-5698, 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 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 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, 1999, 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 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.

This rule decreases the assessment rate established for the Florida Tomato Committee for the 1999-2000 and subsequent fiscal periods from \$0.03 per 25-pound container to \$0.025 per 25-pound container of tomatoes.

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.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 10, 1999, and unanimously recommended 1999-2000 expenditures of \$2,088,900 and an assessment rate of \$0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were \$1,926,000. The assessment rate of \$0.025 is \$0.005 lower than the rate currently in effect. For the previous fiscal period, the Committee had planned to use funds from its authorized reserves to cover some of its approved expenses. The

reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes during 1998–99, and instead of the reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate and using reserve funds to pay some of its operating expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$436,000 for salaries, \$241,000 for research, \$1,000,000 for education and promotion, and \$150,000 for Market Access Program export promotion. Budgeted expenses for these items in 1998–99 were \$364,000, \$212,000, \$900,000, and \$200,000 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 50,000,000 25-pound containers which should provide \$1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$1,879,557) will be kept within the maximum permitted by the order (§966.44; approximately one fiscal period's expenses).

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. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will

be reviewed and, as appropriate, approved by the Department.

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 initial 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 75 producers of tomatoes in the production area and approximately 65 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.

Based on the industry and committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida tomatoes during the 1998–99 season was around \$7.17 per 25-pound container, and total fresh shipments for the 1998–99 season are estimated at 56.7 million 25-pound containers of tomatoes. Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1998–99 season, and the 1998–99 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from \$0.03 per 25-pound container to \$0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 1999–2000 expenditures of \$2,088,900 and an assessment rate of \$0.025 per 25-pound container. The assessment rate of \$0.025 is \$0.005 lower than the 1998–99 rate. The quantity of assessable tomatoes for the 1999–2000 season is estimated at 50,000,000. Thus, the \$0.025 rate should provide \$1,250,000 in assessment income. Income derived from handler

assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 year include \$436,000 for salaries, \$241,000 for research, \$1,000,000 for education and promotion, and \$150,000 for Market Access Program export promotion. Budgeted expenses for these items in 1998–99 were \$364,000, \$212,000, \$900,000 and \$200,000, respectively.

For the 1998–99 fiscal period, the Committee decided to use reserve funds to cover some of its authorized expenses. The reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes in 1998–99, and instead of the anticipated reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate. The funds collected from assessments, along with money from the reserve fund will be adequate to cover the Committee's expenditures for the 1999–2000 fiscal year. Pursuant to §966.44, the Committee is authorized to maintain an operating reserve not to exceed approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of \$2,088,900 which included increases in salaries, research, and education and promotion programs. 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 \$0.025 per 25-pound container of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 50,000,000 25-pound containers for the 1999–2000 fiscal period. This is approximately \$624,900 below the anticipated expenses, which the Committee determined to be acceptable as a means of reducing its operating reserves.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1999–2000 season could range between \$6.09 and

\$9.70 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .26 and .41 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 September 10, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site:

<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 is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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 1999–2000 fiscal

period began on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable tomatoes beginning with the 1999–2000 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) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this 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, 1999, an assessment rate of \$0.025 per 25-pound container is established for Florida tomatoes.

Dated: October 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–27742 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, 704, 709, 712, 713, 723, 790, 791 and 792

Credit Unions; Miscellaneous Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: NCUA is correcting minor errors or omissions made in several rules. These amendments are technical rather than substantive.

DATES: This rule is effective October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of

General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: NCUA has issued final rules over several years that contain minor technical mistakes or omissions. Through various amendments, NCUA is correcting the errors found in the following rules.

12 CFR 701.2

NCUA is removing this section because it currently indicates that a publication entitled “Federal Credit Union Bylaws” is incorporated by reference into NCUA’s regulations. However, NCUA does not have such a publication approved by the Office of the Federal Register.

12 CFR 701.21(a) and 12 CFR 703.20(c)

On March 5, 1998, § 701.27 was removed and incorporated into part 712, entitled “Credit Union Service Organizations (CUSOs).” 63 FR 10756. Therefore, NCUA is replacing references to § 701.27 with part 712 in these sections.

12 CFR 703.20(a) and 12 CFR 704.7(d)

Prior to September 29, 1998, member business loans were excluded from part 703 through § 701.21(h). On that date, NCUA issued an interim final rule that removed the member business loan provisions from § 701.21(h) and relocated them to part 723. 63 FR 51799. This change became final on May 27, 1999. 64 FR 28729. When part 723 was issued, NCUA unintentionally failed to amend § 703.20(a) to reflect the change. Similarly, NCUA is also replacing the reference to § 701.21(h) within § 704.7(d) to part 723.

12 CFR 709.5(e)

Section 709.5(e) refers to a list of claims found in paragraph (b) of this section. When paragraph (b)(9) was added to § 709.5(b), NCUA failed to amend paragraph (e) to reflect the change. 62 FR 12949, Mar. 19, 1997. Therefore, NCUA is now amending the last sentence of § 709.5(e).

12 CFR Part 712

Part 712 was adopted with the title to § 712.9 mislabeled in its table of contents. 63 FR 10756, Mar. 5, 1998. Therefore, NCUA is correcting the table of contents to represent the title of § 712.9 accurately.

12 CFR 712.3(a)

NCUA recently amended this section, but the amended language inadvertently repeated the first sentence of this paragraph. 64 FR 33187, June 22, 1999.