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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV03-966-4 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 2003-04 and subsequent fiscal periods from \$.02 to \$.025 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. 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.

**EFFECTIVE DATE:** December 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884-1671; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, 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.

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](mailto: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, 2003, 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 2003-04 and subsequent fiscal periods from \$.02 to \$.025 per 25-pound container or equivalent of tomatoes.

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 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 2001-02 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 (68 FR 15338, March 31, 2003; 66 FR 56599, November 9, 2001).

The Committee met on September 4, 2003, and unanimously recommended 2003-04 expenditures of \$1,773,100 and an assessment rate of \$0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were \$1,910,840. The assessment rate of \$0.025 is \$.005 higher than the rate currently in effect. The number of assessable containers during 2003-04 is estimated to be 50 million and the recommended assessment rate would generate \$1,250,000 in income. The Committee's financial reserve is now estimated to be \$1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate allows the Committee to maintain its financial reserve at a level it deems appropriate.

The major expenditures recommended by the Committee for the 2003-04 fiscal period include \$700,000 for education and promotion, \$405,000 for salaries, \$320,000 for research, \$49,000 for employee health insurance, and \$61,000 for employee retirement. Budgeted expenses for these items in 2002-03 were \$900,000 for education and promotion, \$370,730 for salaries, \$320,000 for research, \$38,250 for employee health insurance, and \$54,860 for employee retirement, respectively.

The assessment rate recommended by the Committee was derived by examining anticipated expenses and expected shipments of Florida tomatoes and considering available reserves. As mentioned earlier, tomato shipments for the year are estimated at 50 million 25-pound containers or equivalents 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, should be adequate to cover budgeted expenses. Funds in the reserve currently total \$1,767,427 and are 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 2003–04 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 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2002–03 season was approximately \$9.59 per 25-pound container or equivalent, and total fresh shipments for the 2002–03 season were 50,974,342 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 \$9.59 per 25-pound container, about 75 percent of handlers could be considered small businesses under SBA's definition. Therefore, the majority of handlers of Florida tomato handlers may be classified as small entities. It also is believed that the majority of Florida tomato producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from \$0.02 to \$0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 2003–04 expenditures of \$1,773,100 and an assessment rate of \$0.025 per 25-pound container or equivalent. The assessment rate of \$0.025 is \$0.005 higher than the 2002–03 rate. The quantity of assessable tomatoes for the 2003–04 season is estimated at 50 million 25-pound cartons or equivalents. 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, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include \$700,000 for education and promotion, \$405,000 for salaries, \$320,000 for research, \$49,000 for employee health insurance, and \$61,000 for employee retirement. Budgeted expenses for these items in 2002–03 were \$900,000 for education and promotion, \$370,730 for salaries, \$320,000 for research, \$38,250 for employee health insurance, and \$54,860 for employee retirement, respectively.

As previously mentioned, the number of assessable containers during 2003–04

is estimated to be 50 million and the recommended assessment rate would generate \$1,250,000 in income. The Committee's financial reserve is now estimated to be \$1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate will allow the Committee to maintain its financial reserve at a level it deems appropriate.

The Committee reviewed and unanimously recommended 2003–04 expenditures of \$1,773,100 which included increases in administrative and office 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 or equivalent of tomatoes was then determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate should generate \$1,250,000 in income. This is approximately \$523,100 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 2003–04 season could range between \$6.45 and \$10.37 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 2003–04 season as a percentage of total grower revenue could range between .4 and .2 percent, respectively.

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 September 4, 2003, 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.

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 October 27, 2003 (68 FR 61146). Copies of the proposed rule were also mailed or sent via facsimile to all tomato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending November 26, 2003, 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 handlers are already receiving 2003–04 crop tomatoes from growers. The 2003–04 fiscal period began on August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and 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:

### 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, 2003, an assessment rate of \$0.025 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: December 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31265 Filed 12–18–03; 8:45 am]

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### DEPARTMENT OF THE TREASURY

#### Office of the Comptroller of the Currency

#### 12 CFR Parts 5 and 28

[Docket No. 03–26]

RIN 1557–AC04

#### Rules, Policies, and Procedures for Corporate Activities; International Banking Activities

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is finalizing the proposed rule published on April 23, 2003 amending our regulations pertaining to the foreign operations of national banks, and Federal branches and agencies of foreign banks operating in the United States. The final rule generally makes regulatory requirements more streamlined and risk-focused. It clarifies certain regulatory definitions and simplifies approval procedures for foreign banks seeking to establish Federal branches and agencies in the United States. These changes will further conform the treatment of Federal branches and agencies of foreign banks to that of their domestic national bank counterparts consistent with the national treatment principles of the International Banking Act of 1978.

**EFFECTIVE DATE:** This rule is effective on January 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lee Walzer, Counsel, Legislative & Regulatory Activities Division, (202) 874–5090; Carlos Hernandez, Senior International Advisor, International

Banking & Finance, (202) 874–4730; or Crystal Maddox, Senior Licensing Analyst, Licensing Policy & Systems, (202) 874–5060.

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction and Overview of Comments Received

As part of our ongoing effort to streamline regulatory requirements to reduce unnecessary regulatory burdens, the OCC published a notice of proposed rulemaking (NPRM) to amend 12 CFR parts 5 and 28 in the **Federal Register** on April 23, 2003 (68 FR 19949). In the NPRM, we proposed streamlining certain application processes for Federal branches and agencies and updating the types of activities in which they may engage in light of developments in Federal banking law and in furtherance of the principle of national treatment. The proposal was also designed to reduce regulatory burden on national banks conducting foreign activities and on Federal branches and agencies supervised by the OCC by eliminating outdated requirements and replacing them with more streamlined procedures.

The OCC received eight comments on the NPRM. The commenters included several Members of Congress, Federal and state banking agencies, a bank trade association, and an association of state banking officials. Four of the commenters generally supported the OCC's efforts to streamline our regulatory processes and reduce regulatory burden, but offered suggestions to modify various portions of the proposal. Two commenters did not favor the proposal, asserting that the NPRM exceeds the OCC's statutory authority and is inconsistent with congressional intent. These commenters requested that the OCC withdraw the proposal until Congress provides the necessary authority. One of the commenters focused exclusively on a narrow legal question involving interstate branching. Another commenter focused only on the impact on pending legislation if the OCC were to apply certain definitions used in the NPRM to define those same terms in pending legislation if it were to be enacted by the U.S. Congress.

As we explain in the discussion that follows, the OCC has concluded that there is ample authority supporting the revisions to our regulations that we proposed. We also explain why the concerns raised by certain commenters are not, in fact, raised by this proposal. Accordingly, we decline to withdraw the proposal. However, the final rule includes modifications to the proposal intended to address certain of the