

be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is proposed to be amended as follows:

#### PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 946.141 is revised to read as follows:

#### § 946.141 Late payment and interest charge.

The Committee shall impose an interest charge on any handler who fails to pay his or her assessment within sixty (60) days of the billing date shown on the handler's assessment statement received from the Committee. The interest charge shall, after 60 days, be one percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment, the one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

Dated: October 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–24918 Filed 10–17–08; 8:45 am]

**BILLING CODE 3410–02–P**

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. AMS–FV–08–0081; FV08–966–1 PR]

#### Tomatoes Grown In Florida; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Florida Tomato Committee (Committee) for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 per 25-

pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by November 19, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; **Fax:** (202) 720–8938; or **Internet:** <http://www.regulations.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, or can be viewed at: <http://www.regulations.gov>.

#### 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](mailto:William.Pimental@usda.gov) or [Christian.Nissen@usda.gov](mailto: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](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 proposed herein would be applicable to all assessable tomatoes beginning on August 1, 2008, 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 would increase the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 per 25-pound carton 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 2007–08 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 14, 2008, and unanimously recommended 2008–09 expenditures of \$2,438,200 and an assessment rate of \$0.0375 per 25-pound carton of tomatoes. In comparison, last year's budgeted expenditures were \$2,101,000. The assessment rate of \$0.0375 is \$0.005 higher than the rate currently in effect. The assessment increase is needed to offset the 2008–09 increase in education and promotion expenses, salaries, and employee retirement. Without the increase in the assessment rate, the Committee would need to utilize an additional \$250,000 from the authorized reserve. Therefore, the Committee voted to increase the assessment rate.

The major expenditures recommended by the Committee for the 2008–09 year include \$1,200,000 for education and promotion, \$505,500 for salaries, \$320,000 for research, and \$77,000 for employee retirement. Budgeted expenses for these items in 2007–08 were \$900,000, \$467,000, \$320,000, and \$71,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses, less anticipated funds from the USDA Market Access Program (MAP), by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million 25-pound cartons and should provide \$1,875,000 in assessment income. Income derived from handler assessments, along with interest income, MAP funds, and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently approximately \$593,000) would be kept within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44 of the order.

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether

modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2008–09 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### **Initial 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 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.

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 2007–08 season was approximately \$13.71 per 25-pound container, and total fresh shipments for the 2007–08 season were 45,177,457 25-pound 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 price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, 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 would increase the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from \$0.0325 to \$0.0375 per 25-pound carton of tomatoes. The Committee unanimously recommended

2008–09 expenditures of \$2,438,200 and an assessment rate of \$0.0375 per 25-pound carton. The proposed assessment rate of \$0.0375 is \$0.005 higher than the 2007–08 rate. The quantity of assessable tomatoes for the 2008–09 season is estimated at 50 million 25-pound cartons. Thus, the \$0.0375 rate should provide \$1,875,000 in assessments. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, and other income, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2008–09 year include \$1,200,000 for education and promotion, \$505,500 for salaries, \$320,000 for research, and \$77,000 for employee retirement. Budgeted expenses for these items in 2007–08 were \$900,000, \$467,000, \$320,000, and \$71,000, respectively.

The assessment increase is needed to offset the 2008–09 increase in education and promotion expenses, salaries, and employee retirement. Without the increase in the assessment rate, the Committee would need to utilize an additional \$250,000 from the authorized reserve. Therefore, the Committee voted to increase the assessment rate.

The Committee reviewed and unanimously recommended 2008–09 expenditures of \$2,438,200, which included increases in education and promotion, salaries, and employee retirement. 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 education and promotion projects to the tomato industry. The assessment rate of \$0.0375 per 25-pound container of assessable tomatoes was determined by examining the anticipated expenses, expected shipments, MAP funds, and available reserves. The recommended assessment rate would generate \$1,875,000 in income. Considering income from assessments, interest, and other sources, total income would be approximately \$27,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2008–09 fiscal period indicates that the grower price for the 2008–09 season could range between \$7.98 and \$12.95 per 25-pound carton of tomatoes. Therefore, the estimated assessment

revenue for the 2008–09 season as a percentage of total grower revenue could range between 0.3 and 0.5 percent.

This action would increase 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 would be 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 14, 2008, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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 small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2008–09 fiscal period began on August 1, 2008, 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) 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 years.

#### 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 proposed to be 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, 2008, an assessment rate of \$0.0375 per 25-pound carton is established for Florida tomatoes.

Dated: October 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-24919 Filed 10-17-08; 8:45 am]

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#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 50

[Docket No. PRM-50-88; NRC-2007-0017]

#### Thomas E. Magette on Behalf of EnergySolutions, LLC; Notice of Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Denial.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. Thomas E. Magette on behalf of EnergySolutions, LLC. The petitioner requested that the NRC's regulations governing domestic licensing of production and utilization facilities be amended to provide a regulatory framework that would allow funds from licensees' decommissioning trust funds to be used for the cost of disposal of "major radioactive components" (MRCs) that have been removed from reactors before the permanent cessation of operations.

**DATES:** The docket for the petition for rulemaking, PRM-50-88, is closed on October 20, 2008.

**ADDRESSES:** You can access publicly available documents related to this petition for rulemaking using the following methods:

**Federal e-Rulemaking Portal:** Further NRC action on the issues raised by this petition will be accessible at the Federal rulemaking portal, <http://www.regulations.gov>, by searching on rulemaking docket ID: NRC-2007-0017. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). The NRC also tracks all rulemaking actions in the "NRC Regulatory Agenda: Semiannual Report (NUREG-0936)."

**NRC's Public Document Room (PDR):** The public may examine, and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Document Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1-800-387-4209 or 301-415-4737, or by e-mail to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Harry S. Tovmassian, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555-0001, telephone 301-415-3092, e-mail [harry.tovmassian@nrc.gov](mailto:harry.tovmassian@nrc.gov), or Steven R. Hom, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555-0001, telephone 301-415-1537, e-mail [steven.hom@nrc.gov](mailto:steven.hom@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On May 29, 2007, the NRC received a petition for rulemaking filed by Mr. Thomas E. Magette on behalf of EnergySolutions, LLC. The petitioner requested that the NRC amend its regulations to provide a regulatory framework that would allow funds from licensees' decommissioning trust funds to be used for the cost of disposal of MRCs that have been removed from reactors before the permanent cessation of operations. On August 21, 2007 [72 FR 46569], the NRC published a notice of receipt of the petition for rulemaking