

the submission of information on domestic and imported boxed lamb cuts sales. All other provisions of the LMR regulations will remain the same. Adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the estimated number of lamb importers required to report from six to eight. This change will not substantially impact the overall total burden hours. The estimated annual cost burden per importer of \$2,070 remains the same. Amending the definition for the term "carlot-based" by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would be expected to lessen the number of covered sales transactions required to be submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable.

List of Subjects in 7 CFR Part 59

Lamb, Livestock, Reporting, Importer.

For the reasons set forth in the preamble, Chapter I, of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

1. The authority citation for part 59 continues to read as follows:

Authority: 7 U.S.C. 1621 et. seq.

Subpart D—Lamb Reporting

§ 59.300 [Amended]

2. The definition of the term *Carlot-based* is revised to read as follows:

The term *Carlot-based* when used in reference to lamb carcass sales means any transaction between a buyer and a seller destined for three or more delivery stops consisting of any combination of carcass weights. When

used in reference to boxed lamb cuts sales, the term *Carlot-based* means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.

3. In the definition of the term *Importer*, the number "5,000" is revised to read "2,500" each time it appears.

Dated: October 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV03-966-4 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 2003-2004 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 would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 26, 2003.

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 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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.

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, 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 would increase 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 would allow 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 promotions, \$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 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, would 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 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 2003–04 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. 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 would increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from \$.02 to \$.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 pound container. The proposed 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. 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, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 year include \$700,000 for education and promotions, \$405,000 for salaries, \$320,000 for research, \$49,000 for employee health insurance, and \$54,860 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 would 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 of tomatoes was determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate would 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 as a percentage of total grower revenue could range between .4 and .2 percent, respectively.

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 September 4, 2003, 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 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.

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/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.

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 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; (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.

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

Dated: October 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214, and 299

[ICE No. 2297–03]

RIN 1653–AA23

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (HSA) (Public Law 107–296). The Service's adjudications functions transferred to the U.S. Citizenship and Immigration Services (CIS) of DHS, and the Service's Student and Exchange Visitor Information System (SEVIS) functions transferred to the Bureau of Immigrations and Customs Enforcement (ICE) of DHS. For the sake of simplicity, any reference to the Service has been changed to DHS, even when referencing events that preceded March 1, 2003. This rule proposes to amend the regulations of DHS to provide for the collection of a fee to be paid by certain aliens who are applying for F–1, F–3, M–1, or M–3 student visas or for a J–1 visa as an exchange visitor. Generally, the rule proposes a fee of \$100, although applicants for certain J–1 exchange programs will pay a reduced fee of \$35, and certain other aliens will be exempt from the fee altogether. This proposed rule explains which aliens will be required to pay the fee, describes the consequences that an alien seeking an F, J, or M nonimmigrant visa faces upon failure to pay the fee, and specifies which aliens are exempt from the fee. This fee is levied on students applying for F, J, or M nonimmigrant visas to cover the costs of administering and maintaining the SEVIS system and ensuring compliance by individuals, schools, and organizations with the system's requirements. The fee imposed under this proposed rule will pay for the continued operation of the SEVIS