

**Need for Correction**

As published, the final regulation contains errors which may prove to be misleading and are in need of proper clarification.

**List of Subjects in 7 CFR parts 923**

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 923 is corrected by making the following correcting amendments:

**PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON**

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 923.322, paragraphs (f) (1), (2), and (3) are added to read as follows:

**§ 923.322 Washington Cherry Regulation 22.**

\* \* \* \* \*

(f) \* \* \*

(1) The shipment consists of cherries sold for home use and not for resale;

(2) The shipment does not, in the aggregate, exceed 100 pounds, net weight, of cherries; and

(3) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

\* \* \* \* \*

Dated: December 18, 1995.

Sharon Bomer Lauritsen,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-31278 Filed 12-26-95; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 966**

[Docket No. FV95-966-1FIR]

**Tomatoes Grown in Florida; Expenses and 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 that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** August 1, 1995, through July 31, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770.

**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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1995-96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This final 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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.

Since the interim final rule was issued, new information on the actual number of producers and handlers was received. There are approximately 90 producers of Florida tomatoes under this marketing order, and approximately 75 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of 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 budget of expenses for the 1995-96 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 7, 1995, and unanimously recommended a 1995-96 budget of \$2,025,000, \$190,000 less than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Office salaries, \$319,100 (\$297,300), depreciation, \$19,000 (\$18,200), employee's retirement program, \$50,500 (\$46,600), insurance and bonds, \$8,000 (\$7,000), payroll tax, \$22,150 (\$20,000), supplies and printing, \$8,500 (\$7,500), and miscellaneous, \$2,000 (\$1,600), audit, \$3,750 (\$2,500), and research expense, \$245,000 (\$192,100). Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Office

rent, \$24,500 (\$24,700), and education and promotion expense, \$1,225,000 (\$1,500,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of \$0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 50,000,000 25-pound containers, will yield \$2,000,000 in assessment income. This, along with \$25,000 in interest and other income, will be adequate to cover budgeted expenses.

An interim final rule was published in the Federal Register on October 30, 1995 (60 FR 55176). That interim final rule added § 966.233 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through November 29, 1995. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendations 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.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal period began on August 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an interim final 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**

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 60 FR 55176 on October 30, 1995, is adopted as a final rule without change.

Dated: December 18, 1995.

Sharon Bomer Lauritsen,  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 95-31274 Filed 12-26-95; 8:45 am]

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### **7 CFR Part 1250**

[Docket No. PY-95-005]

#### **Technical Amendments to Egg Research and Promotion Order and Rules and Regulations**

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Final Rule; Termination Order.

**SUMMARY:** A review of the Order and rules and regulations implementing the egg research and promotion program identified a number of changes to eliminate sections which are duplicative or obsolete and will avoid current and future conflict. The revisions eliminate certain sections dealing with membership on the Egg Board, obtaining refunds, and other miscellaneous provisions.

**EFFECTIVE DATE:** December 27, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Angela C. Clonts, Standardization Branch, Poultry Division, AMS, USDA, P.O. Box 96456, Room 3944-S, Washington, DC 20090-6456; telephone (202) 720-3506; fax (202) 720-5631.

**SUPPLEMENTARY INFORMATION:** This rule amends the Egg Research and Promotion Order and Rules and Regulations [7 CFR part 1250], hereinafter referred to as the Order and regulations. The Order and regulations are effective under the Egg Research and Consumer Information Act, as amended, hereinafter referred to as the Act.

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

#### **Executive Orders 12866 and 12778**

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would 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 14 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provisions of the order, or any obligations imposed in connection with the Order, are not in accordance with law and requesting a modification of the Order or an exemption therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

#### **Effect on Small Entities**

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the changes are primarily to remove obsolete and duplicate material and establish definitions consistent with current industry terminology.

#### **Paperwork Reduction**

Information collection requirements and recordkeeping provisions contained in 7 CFR Part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0093 under the Paperwork Reduction Act of 1980.

No additional recordkeeping requirements are imposed as a result of this rule.

#### **Background and Proposed Changes**

A review of the Order and regulations was conducted in response to the President's Regulatory Review Initiative of March 4, 1995. As a result, a number of provisions were identified that could be removed without adverse impact to the program. The amendments eliminate sections that contain provisions duplicated in other sections or are obsolete.

#### **Membership Provisions**

Section 1250.328(d) was developed to establish the manner in which the initial Board would be nominated. Since June 1984, any changes in the