

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