

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. APHIS-2009-0048]

RIN 0579-AC99

#### User Fees for Agricultural Quarantine and Inspection Services

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule; withdrawal.

**SUMMARY:** This document withdraws the interim rule published in the **Federal Register** on September 28, 2009, adjusting the user fees charged for certain agricultural quarantine and inspection services provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. That interim rule was originally scheduled to become effective on October 1, 2009, but on October 2, 2009, we published in the **Federal Register** a second document delaying the effective date until November 1, 2009. We have now decided to withdraw the interim rule in order to explore other regulatory alternatives.

**DATES:** The withdrawal of the interim rule amending 7 CFR part 354 published at 74 FR 49311-49315 on September 28, 2009, and delayed in a document published at 74 FR 50915 on October 2, 2009, is effective October 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Mr. William E. Thomas, Director, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737; (301) 7345214. For information concerning rate

development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737-1232; (301) 734-0882.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule<sup>1</sup> published in the **Federal Register** on September 28, 2009 (74 FR 49311-49315, Docket No. APHIS-2009-0048), we amended the user fee regulations in 7 CFR part 354 by adjusting the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The rule was scheduled to become effective on October 1, 2009. On October 2, 2009, however, we published a second document in the **Federal Register** (74 FR 50915, Docket No. APHIS-2009-0048) delaying the effective date of the interim rule until November 1, 2009. The delay was intended to provide entities affected by the changes in AQI user fees additional time to make the necessary preparations to comply with the new fees. In conjunction with the delay, public meetings on the interim rule were held in Riverdale, MD, on October 15 and October 27, 2009. Transcripts of the meetings will be made available on the Regulations.gov Web site.<sup>2</sup>

We have now decided to withdraw the interim rule in order to explore other regulatory alternatives.

Accordingly, the interim rule amending 7 CFR part 354 published at 74 FR 49311-49315 on September 28, 2009, and delayed in a document published at 74 FR 50915 on October 2, 2009, is withdrawn effective October 30, 2009.

**Authority:** 7 U.S.C. 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

<sup>1</sup> To view the interim rule and the delay of effective date, go to: <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0048>.

<sup>2</sup> See footnote 1.

Done in Washington, DC, this 30th day of October 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9-26518 Filed 10-30-09; 4:15 pm]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Doc. No. AMS-FV-09-0063; FV09-966-2 IFR]

#### Tomatoes Grown in Florida; Decreased Assessment Rate

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

**ACTION:** Interim final rule.

**SUMMARY:** This rule decreases the assessment rate established for the Florida Tomato Committee (Committee) for the 2009-10 and subsequent fiscal periods from \$0.0375 to \$0.0275 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 Florida 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 will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective November 5, 2009. Comments received by January 4, 2010, will be considered prior to issuance of a final rule.

**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 document 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>. All comments submitted in response to this

rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

Doris Jamieson, 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: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.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@ams.usda.gov](mailto:Jay.Guerber@ams.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 Florida tomatoes beginning August 1, 2009, and continue until amended, suspended, or terminated.

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 decreases the assessment rate established for the Committee for the 2009-10 and subsequent fiscal periods from \$0.0375 per 25-pound carton to \$0.0275 per 25-pound carton of Florida 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 2008-09 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 20, 2009, and unanimously recommended 2009-10 expenditures of \$1,910,500 and an assessment rate of \$0.0275 per 25-pound carton of tomatoes. In comparison, last year's budgeted expenditures were \$2,438,200. The assessment rate of \$0.0275 is \$0.01 lower than the rate currently in effect. The Committee recommended the decrease in assessment rate due to a reduction in expenditures for education and promotion.

The major expenditures recommended by the Committee for the 2009-10 year include \$700,000 for education and promotion, \$475,500 for salaries, \$320,000 for research, and \$70,000 for employee retirement. Budgeted expenses for these items in 2008-09 were \$1,200,000, \$505,500, \$320,000, and \$77,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million cartons, which should provide \$1,375,000 in assessment income. Income derived from handler

assessments, along with interest income and income from the USDA Market Access Program (MAP), will be adequate to cover budgeted expenses. Funds in the reserve (currently \$502,000) will be kept 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 is effective 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 2009-10 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 \$7,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2008–09 season was approximately \$8.13 per 25-pound carton, and total fresh shipments for the 2008–09 season were 47,054,853 25-pound cartons of tomatoes. Committee data indicates 10 percent of the handlers handle 56 percent of the total volume shipped outside the regulated area. Based on the average price and the other data available, a majority 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 decreases the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent fiscal periods from \$0.0375 to \$0.0275 per 25-pound carton of tomatoes. The Committee unanimously recommended 2009–10 expenditures of \$1,910,500 and an assessment rate of \$0.0275 per 25-pound container. The assessment rate of \$0.0275 is \$0.01 lower than the 2008–09 rate. The quantity of assessable tomatoes for the 2009–10 season is estimated at 50 million. Thus, the \$0.0275 rate should provide \$1,375,000 in assessment income. Income derived from handler assessment income, along with interest income and funds from the MAP program will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009–10 year include \$700,000 for education and promotion, \$475,500 for salaries, \$320,000 for research, and \$70,000 for employee retirement. Budgeted expenses for these items in 2008–09 were \$1,200,000, \$505,500, \$320,000, and \$77,000, respectively.

The Committee recommended the decrease in assessment rate due to a reduction in expenditures for education and promotion.

The Committee reviewed and unanimously recommended 2009–10 expenditures of \$1,910,500 which included decreases in education and promotion, salaries, employee retirement, and payroll expenses. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance, Research, and Education and Promotion Subcommittees. Alternative

expenditure levels were discussed by these groups, based upon the relative value of various projects to the tomato industry. The assessment rate of \$0.0275 per 25-pound carton of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 50 million 25-pound cartons for the 2009–10 season. Considering income from assessments, interest, and income from other sources, total income will be approximately \$41,500 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2009–10 season could range between \$3.89 and \$19.01 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2009–10 season as a percentage of total grower revenue could range between .1 and .7 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 20, 2009, 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 interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action 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.

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.

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 is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2009–10 fiscal year began on August 1, 2009, 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) this action decreases the assessment rate for Florida tomatoes beginning with the 2009–10 fiscal period; (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; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this 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

■ 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, 2009, an assessment rate of \$0.0275 per 25-pound

carton is established for Florida tomatoes.

Dated: October 27, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-26462 Filed 11-3-09; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE300; Special Conditions No. 23-240-SC]

#### **Special Conditions: Cessna Aircraft Company, Model 525C; Flight Performance, Flight Characteristics, and Operating Limitations**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Cessna Aircraft Company, Model 525C airplane. This airplane will have a novel or unusual design feature(s) associated with turbofan engines, engine location, and certain performance characteristics necessary for this type of airplane that were not envisioned by the existing regulations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is November 4, 2009. We must receive your comments by December 4, 2009.

**ADDRESSES:** Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE-7, Attn: Rules Docket No. CE300, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE300. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lowell Foster, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas

City, MO 64106; telephone (816) 329-4125; facsimile (816) 329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### **Comments Invited**

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### **Background**

On June 28, 2007, Cessna Aircraft Company applied for a type certificate for their new Model Cessna Model 525C. The Cessna Model 525C is a commuter category derivative configuration of the Model 525B airplane with unique turbofan engines, engine location, and certain performance characteristics necessary for this type of airplane. Unlike similar commuter category jet projects, these special conditions reflect the model history of the model 525 back through

normal category for consistency in training.

#### **Type Certification Basis**

Under the provisions of 14 CFR, part 21, § 21.17, Cessna Aircraft Company must show that the Cessna Model 525C meets the applicable provisions of part 23, as amended by Amendment 23-1 through 23-59 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model 525C because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 525C must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

#### **Novel or Unusual Design Features**

The Cessna Model 525C will incorporate the following novel or unusual design features: Two aft mounted Williams International FJ44-4A turbofan engines rated at 3,400 pounds of thrust with a Full Authority Digital Engine Control (FADEC) system and other performance characteristics that were not envisioned by the regulations when the Model 525 was originally certificated.

#### **Applicability**

As discussed above, these special conditions are applicable to the Cessna Model 525C. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

#### **Conclusion**

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general