

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV01-905-3 IFR]

#### Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Decreased Assessment Rate

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Citrus Administrative Committee (Committee) for the 2001-02 and subsequent fiscal periods from \$0.0055 to \$0.005 per 4/5 bushel carton of Florida citrus handled. The Committee locally administers the marketing order, which regulates the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. Authorization to assess Florida citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer 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:** Effective: November 13, 2001. Comments received by January 8, 2002, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto: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:** William Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; 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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; 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. 84 and Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are 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 citrus 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 would be applicable to all assessable Florida citrus beginning on August 1, 2001, 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 the 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 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 2001-02 and subsequent fiscal periods from \$0.0055 to \$0.005 per 4/5-bushel carton or equivalent of citrus.

The Florida citrus 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 and handlers of Florida citrus. 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 2000-01 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 the USDA upon recommendation and information submitted by the Committee or other information available to the USDA.

The Committee met on August 29, 2001, and unanimously recommended 2001-02 expenditures of \$280,000 and an assessment rate of \$0.005 per 4/5-bushel carton of Florida citrus. In comparison, last year's budgeted expenditures were \$255,500. The

assessment rate of \$0.005 is \$0.0005 lower than the rate currently in effect. Last fiscal year, Committee revenues exceeded expenses by \$38,500. Committee members agreed that the excess revenues should be used to reduce the assessment rate. The \$38,500 was added to the anticipated assessment revenue along with interest income for a revenue total of \$280,000 for the 2001–02 fiscal period.

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$121,300 for salaries, \$25,000 for Manifest USDA–FDACS, \$21,000 for insurance and bonds, \$18,750 for retirement plan, \$44,550 for miscellaneous and reserve, and \$10,000 for telephone. Other expenses for 2001–02 total \$39,400. Budgeted expenses for these items in 2000–01 were \$118,300, \$36,000, \$19,900, \$18,500, \$12,450, and \$10,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Florida citrus. With Florida citrus shipments for the year are estimated at 48,000,000 cartons, assessment income should total \$240,000. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$90,334) will be kept within the maximum permitted by the order (one half of one fiscal periods' expenses; § 905.42).

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 the USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. The 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 2001–02 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 11,000 producers of Florida citrus 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 f.o.b. price for fresh Florida citrus during the 2000–01 season was approximately \$7.92 per  $\frac{4}{5}$  bushel carton for all shipments, and the total fresh shipments for the 2000–01 season are estimated at 53.8 million  $\frac{4}{5}$  bushel cartons of Florida citrus. Approximately 68 percent of the handlers handled 93 percent of Florida citrus shipments. Using information provided by the Committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, USDA believes that the majority of Florida citrus producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from \$0.0055 to \$0.005 per  $\frac{4}{5}$ -bushel carton of Florida citrus. The Committee unanimously recommended 2001–02 expenditures of \$280,000 and an assessment rate of \$0.005 per  $\frac{4}{5}$ -bushel carton. The assessment rate of \$0.005 is \$0.0005 lower than the 2000–01 rate. The quantity of assessable Florida citrus for the 2001–02 fiscal period is estimated at 48 million  $\frac{4}{5}$ -bushel cartons. Thus, the \$0.005 rate should provide \$240,000 in assessment income. Assessments, along with interest income and funds from the Committee's

authorized reserve, will be adequate to cover this year's expenses.

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$121,300 for salaries, \$25,000 for Manifest Department—FDACS, \$21,000 for insurance and bonds, \$18,750 for retirement plan, \$44,550 for miscellaneous and reserve, and \$10,000 for telephone. Budgeted expenses for these items in 2000–01 were \$118,300, \$36,000, \$19,900, \$18,500, \$12,450, and \$10,000, respectively.

Last fiscal year, Committee revenues exceeded expenses by \$38,500. Committee members agreed that the excess revenues should be used to reduce the assessment rate. The \$38,500 was added to the anticipated assessment revenue along with interest income for a revenue total of \$280,000 for the 2001–02 fiscal period.

The Committee reviewed and unanimously recommended 2001–02 expenditures of \$280,000, which includes increases in some administrative costs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee, the Grapefruit Subcommittee, and the Regulatory Subcommittee. Alternative expenditure levels were discussed by these groups, based upon previous seasons and the general condition of the Florida citrus industry. The assessment rate of \$0.005 per  $\frac{4}{5}$  bushel carton of assessable citrus was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 48,000,000  $\frac{4}{5}$  bushel cartons for the 2001–2002 fiscal period. This rate is expected to generate \$240,000. This is \$40,000 below the anticipated expenses, which the Board determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price for the 2001–02 season could range between \$4.60 and \$10.70 per  $\frac{4}{5}$  bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between .04 and .1 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, which may reduce the burden on producers. In addition, the Committee's meeting was

widely publicized throughout the Florida citrus 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 29, 2001 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 action imposes no additional reporting or recordkeeping requirements on either small or large Florida citrus 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.

The 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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it hereby found that this rule, as hereinafter set forth, tends 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**: (1) The 2001–02 fiscal period began on August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida citrus handled during such fiscal period; (2) the action decreases the assessment rate for assessable Florida citrus beginning with the 2001–02 fiscal period; and (3) producers and 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 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

#### **PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA**

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

#### **§ 905.235 Assessment rate.**

On and after August 1, 2001, an assessment rate of \$0.005 per 4/5-bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: November 5, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01–28201 Filed 11–8–01; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 930**

[Docket No. FV01–930–3 FIR]

#### **Tart Cherries Grown in the States of Michigan, et al.; Modifications to the Rules and Regulations Under the Tart Cherry Marketing Order**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule increasing the Cherry Industry Administrative Board (Board) membership, and establishing procedures under the rules and regulations of the Federal tart cherry marketing order (order) for handlers who want to post surety bonds to temporarily defer maintaining an inventory reserve for tart cherries. The Board recommended these actions to improve order administration, provide handlers more marketing flexibility, and change Board representation as required. The order regulates the handling of tart cherries grown in the States of Michigan, New York,

Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Board.

**EFFECTIVE DATE:** December 10, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; 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 and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the “order.” This 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. This rule is not intended to have retroactive effect. 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act