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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS–FV–11–0057; FV11–906–1 FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Assessments upon orange and grapefruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* October 5, 2011.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (956) 632–5330, Fax: (956) 632–5358, or *E-mail: Belinda.Garza@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Division, 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: Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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, orange and grapefruit handlers in the Lower Rio Grande Valley 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 oranges and grapefruit beginning on August 1, 2011, 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 increases the assessment rate established for the Committee for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled.

The Texas orange and grapefruit 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 Texas oranges and grapefruit. 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 2004–05 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 June 9, 2011, and unanimously recommended 2011–12 expenditures of $1,224,037 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,109,037. The assessment rate of $0.14 is $0.02 higher than the rate currently in effect. The Committee recommended a higher assessment rate due to an expected smaller crop and an increase in budgeted expenses. Budgeted expenses were increased to provide additional funding for the Committee's Mexican fruit fly program, and also to fund a Federal Agriculture Improvement Reform (FAIR) review analysis to be conducted next fiscal period. In 1996, Congress mandated that every five years commodity boards established under the oversight of the Secretary of Agriculture pursuant to a commodity promotion law should fund an independent evaluation of the effectiveness of their generic promotion program, which is now commonly known as a FAIR review.

The Committee projected a reduced crop of 8,750,000 7/10-bushel carton equivalents, which would be 289,137 7/10-bushel carton equivalents less than the 9,039,137 7/10-bushel carton equivalents handled during the 2010–11 fiscal period. Furthermore, due to severe cuts in the State of Texas' budget, the Texas Department of Agriculture requested the citrus industry's assistance in funding a Mexican fruit fly trapping program, which is essential to the industry's well-being. Based on a decreased crop estimate and anticipated expenditure increases, the Committee unanimously recommended that the assessment rate of $0.12 currently in effect be increased by $0.02. Income derived from handler assessments and interest should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011–12 fiscal period include $479,000 for the Mexican fruit fly support, trapping, and bait spray programs; $425,000 for promotion; and $250,737 for management, administration, and compliance oversight. In comparison, major expenditures for these items in 2010–11 (last fiscal period) were $229,000, $600,000, and $246,737, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenditures by estimated shipments of Texas oranges and grapefruit. As mentioned earlier, orange and grapefruit shipments for the 2011–12 fiscal period are estimated at 8.75 million 7/10-bushel carton equivalents, which should provide $1,225,000 in assessment income. Income generated through the $0.14 assessment rate and interest would be more than sufficient to meet anticipated expenses ($1,224,037). Reserve funds at the end of 2011–12 are projected at $283,774, well below one fiscal period's expenses, which would be within the maximum reserve amount permitted under the order (§ 906.35).

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 will be in effect 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 2011–12 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final 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 final 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 177 producers of oranges and grapefruit in the production area and approximately 12 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (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 $7,000,000.

An updated Texas citrus industry profile shows that 6 of the 12 handlers (50 percent) would be considered large businesses under SBA's definition, and the remaining 6 handlers (50 percent) would be considered small businesses. Of the approximately 177 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, half of the handlers and the majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. The Committee unanimously recommended 2011–12 expenditures of $1,224,037 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent handled. The quantity of assessable oranges and grapefruit for the 2011–12 fiscal period is estimated at 8.75 million 7/10-bushel carton equivalents. Thus, the $0.14 assessment rate should provide $1,225,000 in assessment income which should be sufficient to meet anticipated expenses.

The major expenditures recommended by the Committee for the 2011–12 fiscal period include $479,000 for the Mexican Fruit Fly support, trapping, and bait spray programs; $425,000 for promotion; and $250,737 for management, administration, and compliance oversight. Major expenditures for these items in 2010–11 were $229,000, $600,000, and $246,737, respectively.

The increased assessment rate recommended by the Committee was due to a reduced crop estimate (8.75 million 7/10-bushel carton equivalents of oranges and grapefruit), and an increase in budgeted expenditures to provide additional funding for the Mexican fruit fly program and a FAIR analysis. With anticipated assessment income of $1,225,000, and anticipated expenditures of $1,224,037, funds in the reserve would be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

In arriving at its recommended budget, the Committee considered alternative expenditure levels based upon the relative need of the Mexican fruit fly trapping and promotion programs to the Texas citrus industry. The assessment rate of $0.14 per 7/10-bushel carton equivalent was then determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit, estimated at 8.75 million 7/10 bushel carton equivalents for the 2011–12 fiscal period. Considering assessment revenue and interest, total revenue would be approximately $2,463 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information from recent seasons (2008–2010) and preliminary information pertaining to the current fiscal period indicates that the season average packinghouse door price for the 2011–12 fiscal period could likely range from $6.24 to $8.23 per 7/10-bushel carton equivalent of Texas oranges, and from $10.90 to $15.55 for Texas grapefruit. Therefore, the estimated assessment revenue for the 2011–12 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 1.7 and 2.2 percent for oranges and between 0.9 and 1.3 percent for grapefruit.

This action increases 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 are offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 9, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 (Generic Fruit Crops—Mandatory). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on August 10, 2011 (76 FR 49381). Copies of the proposed rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending August 22, 2011, was provided for interested persons to respond to the proposal. No comments were received.

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/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May 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 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 2011–12 fiscal period began on August 1, 2011, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit 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 rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 906

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

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2011, an assessment rate of $0.14 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: September 29, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–25493 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2011–0093]

Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by reclassifying a zone in New Mexico consisting of Curry and Roosevelt Counties. We have determined that the zone meets the criteria for accredited-free status. Since the remainder of the State is already classified as accredited free, the entire State of New Mexico is now classified as accredited free. This action relieves certain restrictions on the interstate movement of cattle and bison from Curry and Roosevelt Counties in New Mexico.

DATES: This interim rule is effective October 4, 2011. We will consider all comments that we receive on or before December 5, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0093-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0093, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0093* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen Orloski, Senior Staff Veterinarian, Ruminant Health Programs, Veterinary Services, APHIS, 2150 Centre Avenue, Building B3E20, Fort Collins, CO 80526; (970) 494–7221.

SUPPLEMENTARY INFORMATION: