

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96-906-2PR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Change in Reporting Requirements and Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the reporting requirements currently prescribed under the Texas orange and grapefruit marketing order. This document also announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to the currently approved information collection requirements issued under the marketing order. The marketing order regulates the handling of oranges and grapefruit grown in three counties in the Lower Rio Grande Valley in Texas and is administered locally by the Texas Valley Citrus Committee (committee). Shipments of oranges and grapefruit out of the production area must meet minimum standards of grade, size, quality and pack. Such shipments are subject to mandatory inspection. This rule would add language in the order's rules and regulations to require that all sales of over 400 pounds of oranges and grapefruit for resale inside the production area be covered by a "Buyer's Certification" form. This requirement would ensure that handlers are aware of and accept responsibility for complying with the order's requirements and that buyers do not intend to transport uninspected oranges and grapefruit out of the three-county production area.

DATES: Comments must be received by October 18, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax # (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682-2833, Fax # (210) 682-5942; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3670, Fax # (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 906 (7 CFR Part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. If adopted, this proposal 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. A 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 15 handlers of oranges and grapefruit who are subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposal invites comments on a change to the reporting requirements currently prescribed under the Texas orange and grapefruit marketing order. This rule would add language in the

order's rules and regulations to provide for the use of a "Buyer's Certification" form (Certification Form). The use of this new form was unanimously recommended by the committee at a public meeting on May 29, 1996.

This proposed rule (1) Would establish a requirement that handlers complete a Certification Form on all sales over 400 pounds of oranges or grapefruit, or both, destined for resale inside the production area to help ensure that such oranges or grapefruit do not leave the production area without meeting order requirements, and (2) provides notice of a request for extension and revision of a currently approved information collection.

Implementation of the requirement to submit Certification Forms would result in a small increase in reporting requirements imposed on handlers. The added cost of complying with this requirement would be minimal and would be offset by benefits derived from enhanced compliance with the order and more complete statistical data beneficial to the entire industry. Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Under the order, Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are required to be inspected and are subject to grade, size, quality, container and pack requirements. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages which are not for resale; (3) under the 400-pound minimum quantity exemption provision; and (4) for relief or charity. In addition, fruit shipped to approved processors for processing are exempt from handling requirements. These handling requirements do not change substantially from season to season, and are in effect on a continuing basis subject to amendment, modification, or suspension as may be determined by the Secretary. Currently, the handling regulations under the order are effective from September 1 through June 30 each year.

Section 906.51 of the order provides authority for the committee, with the approval of the Secretary, to require that each handler furnish to the committee reports and other information as may be necessary for the committee to perform its duties under the marketing order.

The committee recommended the establishment of a requirement that handlers of Texas oranges and grapefruit complete a Certification Form on all

sales of over 400 pounds of oranges or grapefruit or a combination of both that are not intended to leave the production area. (The order currently provides that 400 pounds of Texas oranges or grapefruit or a combination of both not for resale may be shipped per day outside the production area without having to meet marketing order requirements.) The form would require the following information: (1) Names and addresses of the seller and the buyer; (2) description and quantity of the oranges or grapefruit sold; and (3) the destination of the fruit. In addition, the buyer would certify that fruit that is subsequently taken outside the production area for resale will be inspected in accordance with the order and its rules and regulations. The information compiled from use of this form would also provide the committee, its staff, and the industry with valuable statistics on fruit sold and marketed within the production area.

Handling of oranges and grapefruit inside the production area is not regulated. While monitoring compliance during the 1995-96 season, committee staff became aware of a lack of documentation on fruit intended for use within the production area. Such fruit was on occasion found outside the production area without having been inspected and certified as meeting marketing order requirements. The committee recognized the need to make handlers responsible for ensuring that sales of their fruit intended for resale inside the production area, but subsequently leaving the production area, meet the provisions of the order. The Certification Form was developed to help track such sales. Currently, documentation on sales to peddlers and cash buyers, and other transactions not supported by an inspection certificate or a diversion report (used to track shipments for processing, relief, or charity), is minimal or non-existent. In the process of conducting its compliance program, the committee encountered difficulty in tracking movement of such citrus and detecting violations of the order.

The form would be completed by the seller (handler) in triplicate. The buyer would sign the certification statement on the form. One copy would be submitted by the handler to the committee within 7 days after the sale. One copy would be retained by the handler and the third copy would be given to the buyer. The forms would be reviewed by the committee's compliance staff as they are received and would be compared against handler records and inspection certificates. In addition, the form would also provide

valuable statistical information on fruit sold and marketed for use within the production area. Currently, there is no tracking system for local use fruit. Collection of this information would fill a void in the committee's statistical database which would be used to determine total utilization of fruit and further assist the industry in making marketing decisions.

Throughout the past season, the committee considered possible options to monitor shipments of uninspected oranges and grapefruit. It was noted that local use fruit is presently not accounted for, which leaves a significant void in the committee's database. The committee considered, for example, compiling an "approved peddler" list, and allowing uninspected fruit to be sold only to those appearing on the list. This option was determined to be impractical for the industry, as such a list would change constantly and could never be accurately maintained. Development of the Certification Form was the only option believed to be viable. Use of the form would raise awareness of both the handlers' and buyers' responsibility to comply with the provisions of the marketing order. This option would result in the smallest increase in regulatory burden of the options considered, including the establishment of additional regulatory requirements, such as inspection of all shipments, regardless of destination. Therefore, the committee recommended that § 906.151 be amended by designating the existing paragraph in this section as (a) and adding a new paragraph (b).

Completion of the Certification Form at the time of the sale of fruit would total 5 minutes per form. The number of respondents is estimated to total 50, and the frequency of response would be 2 responses per week for a total of 30 weeks. The total information collection burden will be adjusted accordingly.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request an extension for and revision to a currently approved information collection for Texas oranges and grapefruit.

Title: Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906.

OMB Number: 0581-0068.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Act, marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee the orders' operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Texas orange and grapefruit marketing order, which has been operating since 1960.

The Texas orange and grapefruit marketing order authorizes the issuance of grade, size, container and pack regulations. Regulatory provisions apply to oranges and grapefruit shipped outside of the production area, except for those shipments specifically exempt. The order also has authority for marketing research and development projects, including paid advertising.

The order, and rules and regulations issued thereunder, authorize the committee to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to orange and grapefruit supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. As shipments of Texas oranges and grapefruit are normally from September through June, these forms are utilized accordingly. A USDA form is used to allow producers to vote on amendments to the order. In addition, orange and grapefruit producers and handlers who are nominated by their peers to serve as representatives on the committee must file nomination forms with the Secretary.

These forms require the minimum information necessary to effectively

carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

This proposed rule would establish a requirement that each handler complete a form provided by the committee whenever over 400 pounds of oranges and grapefruit are handled for resale inside the production area. This information will help track the flow of oranges and grapefruit handled for resale inside the production area where an inspection certificate or special purpose diversion form is not needed. The information would also be useful to the committee to determine those responsible for complying with the provisions of the marketing order. Completion of the Certification Form at the time of the sale of fruit would total 5 minutes per form. The number of respondents is estimated to total 50, and the frequency of response would be 2 responses per week for a total of 30 weeks. The total information collection burden will be adjusted accordingly.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarters staff, and employees of the committee. Committee employees will be the primary users of the information and AMS employees will be secondary users.

Estimate of Burden: Public reporting burden for this proposed collection of information is estimated to average .156 hours per response.

Respondents: Texas orange and grapefruit producers, handlers, and processors.

Estimated Number of Respondents: 189.

Estimated Number of Responses per Respondent: 18.95.

Estimated Total Annual Burden on Respondents: 561 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the Texas orange and grapefruit marketing order and the Department's oversight of the program; (2) the accuracy of the collection burden estimate including the validity of the methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden of the collection, including through the use of automated or electronic technologies.

Comments must be received by November 18, 1996. Comments should reference OMB No. 0581-0068 and the Texas Orange and Grapefruit Marketing Order No. 906, and be submitted to

Belinda G. Garza at the above address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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 proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE 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. In § 906.151 the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 906.151 Reports.

* * * * *

(b) Each handler who sells over 400 pounds of oranges or grapefruit or a combination of both for resale inside the production area shall, for each transaction, report to the committee on a form approved by it the following information:

- (1) Name and address of seller;
- (2) Name and address of buyer;
- (3) Description and quantity of oranges or grapefruit sold;
- (4) Destination of fruit;
- (5) A statement that the buyer certifies that fruit that is subsequently taken outside the production area for resale will be inspected; and
- (6) Such other pertinent information as the committee may require.

The handler shall prepare the report in triplicate. The buyer shall sign the certification statement. The pink copy shall be submitted to the committee within 7 days. The green copy shall be retained by the handler and the blue copy shall be given to the buyer. Such form shall be reviewed by the committee staff and the information compiled for the committee's use.

Dated: September 10, 1996.

Robert C. Keeney,
Director, Fruit and Vegetable Division.
[FR Doc. 96-23833 Filed 9-17-96; 8:45 am]
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