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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98-905-3 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate from \$0.0035 to \$0.00385 per $\frac{1}{5}$ bushel carton established for the Citrus Administrative Committee (Committee) under Marketing Order No. 905 for the 1998-99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of citrus grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 3, 1998.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (941) 299-4770, Fax: (941) 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) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, 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) 205-6632.

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 (Department) 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 will be applicable to all assessable citrus beginning August 1, 1998, 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 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. Such 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 the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1998-99 and subsequent fiscal

periods from \$0.0035 to \$0.00385 per $\frac{1}{5}$ bushel carton handled.

The Florida citrus marketing order provides authority for the Committee, with the approval of the Department, 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 oranges, grapefruit, tangerines, and tangelos grown in Florida. 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 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 22, 1998, and unanimously recommended 1998-99 expenditures of \$242,275 and an assessment rate of \$0.00385 per $\frac{1}{5}$ bushel carton of citrus. In comparison, last year's budgeted expenditures were \$242,000. The assessment rate of \$0.00385 is \$0.00035 higher than the rate currently in effect. Shipments of fresh citrus for the 1997-98 season are expected to be less than the Committee's initial estimate of 65,000,000 cartons. Estimated shipments for 1998-99 are 61,500,000 cartons, or 3,500,000 million cartons less than the 1997-98 estimate. Due to the anticipated reduction in fresh shipments of Florida citrus to interstate and export markets, the Committee voted to increase the assessment rate to generate funds necessary to meet Committee operating expenditures, and maintain an adequate operating reserve.

The major expenditures recommended by the Committee for the 1998-99 year include \$155,800 for salaries and benefits, \$36,000 for Manifest Department-FDACS, \$18,400 for insurance and bonds, and \$12,325 for retirement plan. Budgeted expenses for these items in 1997-98 were

\$141,450, \$36,000, \$16,500, and \$11,200, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida citrus. As mentioned earlier, citrus shipments for 1998–99 are estimated at 61,500,000 cartons which should provide \$236,775 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$109,371) will be kept within the maximum permitted by the order (approximately one-half of one fiscal period's expenses; § 905.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of citrus in the production area and approximately 109 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Florida citrus producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from \$0.0035 per 4/5 bushel carton to \$0.00385 per 4/5 bushel carton handled. The Committee unanimously recommended 1998–99 expenditures of \$242,275 and an assessment rate of \$0.00385 per 4/5 bushel carton. The assessment rate of \$0.00385 per 4/5 bushel carton is \$0.00035 higher than the 1997–98 rate. The quantity of assessable citrus for the 1998–99 season is estimated at 61,500,000 cartons. Thus, the \$0.00385 rate should provide \$236,775 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to meet this year's expenses.

The Committee estimates a reduced amount of fresh shipments of Florida citrus for the 1998–99 season. They unanimously recommended 1998–99 expenditures of \$242,275 which included increases in staff salaries and benefits, and equipment rental. Equipment rental is budgeted at \$2,200 for 1998–99 and last year it was budgeted at \$800. The major expenditures recommended by the Committee for the 1998–99 year include \$155,800 for salaries and benefits, \$36,000 for Manifest Department-FDACS, \$18,400 for insurance and bonds, and \$12,325 for retirement plan. Budgeted expenses for these items in 1997–98 were \$141,450, \$36,000, \$16,500, and \$11,200, respectively.

Due to the anticipated reduction of fresh shipments, the Committee voted to increase the assessment rate to generate the funds necessary to meet the Committee's operating expenses and maintain an adequate operating reserve. The Committee's authorized reserve (approximately one-half of one fiscal period's expenses) is currently \$109,371. The revenue from assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

Prior to arriving at its 1998–99 budget of \$242,275, the Committee considered information from various sources, such as the Committee's Budget Sub-Committee. Alternative expenditure levels were discussed. However, it was determined that the increases in salaries, benefits, and equipment were needed and justified. The assessment rate of \$0.00385 per 4/5 bushel carton of assessable Florida citrus was then determined by dividing the total recommended budget by the quantity of assessable citrus, estimated at 61,500,000 4/5 bushel cartons for the 1998–99 fiscal period. This is approximately \$5,500 below the anticipated expenses. Assessment income, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses, which the Committee determined to be acceptable.

There are several varieties of citrus regulated under the order. In the 1997–98 season, the f.o.b. price ranged from around \$5.83 to \$6.71 for oranges, from around \$5.26 to \$6.31 for grapefruit, and from around \$7.17 to \$20.39 for speciality citrus. Depending on the volume and variety produced by the individual grower, the price for Florida citrus during the 1998–99 season is expected to range between \$5.26 and \$20.39 per 4/5 bushel carton. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue could range between 0.02 and 0.07 percent.

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 marketing order. 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 May 22, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the Federal Register on July 16, 1998 (63 FR 38347). Copies of the proposed rule were also mailed or sent via facsimile to all citrus handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 17, 1998, was provided for interested persons to respond to the proposal. No comments were received.

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 1998–99 fiscal period began on August 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are already receiving 1998–99 crop citrus from growers; (4) 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; and (5) a 30-day comment period was provided and no comments were received.

List of Subjects in 7 CFR Part 905

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

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, 1998, an assessment rate of \$0.00385 per 4/5 bushel carton is established for

assessable Florida citrus covered under the order.

Dated: August 26, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–23515 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV98–924–1 FR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) under Marketing Order No. 924 for the 1998–99 and subsequent fiscal periods from \$0.75 to \$1.00 per ton of fresh prunes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, 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) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, 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) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 924, both as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon 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 (Department) 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, fresh prune 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 fresh prunes beginning April 1, 1998, and continue until modified, 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 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. Such 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 the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from \$0.75 to \$1.00 per ton of fresh prunes handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members and three handler members, each of whom is familiar with the Committee's needs and with the