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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV99–906–2 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 from $0.11 to $0.12 per 7⁄10 bushel carton of oranges and grapefruit established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer 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.

EFFECTIVE DATE: August 21, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; 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) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on complying 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) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

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 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, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas 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 August 1, 1999, 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 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit handled.

The Texas orange and grapefruit 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 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 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.11 per 7/10 bushel carton 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 June 8, 1999, and unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,181,950. The assessment rate of $0.12 is $0.01 higher than the rate previously in effect. The Committee has operated under a lower assessment rate in recent years and used available reserve funds to make up most of the difference between assessment income and expenses. Since 1994, the Committee's reserve has decreased from almost $400,000 to slightly under $120,000. Thus, the Committee recommended increasing the assessment rate because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds to meet expenses. The Committee wanted to ensure that adequate reserve funds were available to meet unexpected expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million 7/10 bushel cartons, which should provide $1,140,000 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 $119,402) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate established by 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 1999–2000 budget and those for subsequent fiscal periods would 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 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (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 Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a 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 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit. The Committee unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton. The assessment rate of $0.12 is $0.01 higher than the 1998–99 rate. The Committee recommended increasing the assessment rate because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds to meet expenses. The Committee wanted to ensure that adequate reserve funds were available to meet unexpected expenses. As mentioned earlier, the quantity of assessable oranges and grapefruit for the 1999–2000 season is estimated at 9.5 million 7/10 bushel cartons. Assessment income, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the marketing order program, and $73,369, for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries depressed prices. The Committee recommended increasing the assessment rate to $0.12 per 7/10 bushel carton because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds ($5,850) to meet expenses. Interest income totaling $3,000 will also be used to cover program expenses in 1999–2000. At the end of the 1999–2000 fiscal period the reserve is expected to be $113,552.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $1,148,850, which included a decrease in the advertising and promotion program. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established lower assessment rate unchanged. The Committee, however, concluded that retaining the previous rate of assessment for the 1999–2000 fiscal period would have reduced the Committee's reserve to an unacceptable level. Alternative expenditure levels were discussed based upon the relative value of the advertising and promotion program to the Texas citrus industry. The assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and grapefruit was determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit estimated at 9.5 million 7/10 bushel cartons for the 1999–2000 fiscal period. The $0.12 rate should provide $1,140,000 in assessment income. The additional $8,850 will come from the Committee's reserve and interest income.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal period indicates that the f.o.b. price for the 1999–2000 season could range from $4.75 and $12.50 per 7/10 bushel carton of oranges and grapefruit depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total pack-out revenue could range between .96 and 2.5 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 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 8, 1999, 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 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.

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 19, 1999 (64 FR 38597). Copies of the proposed rule were also mailed or sent via facsimile to all Texas orange and grapefruit handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 20-day comment period ending August 9, 1999, 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 the 1999–2000 fiscal period began on August 1, 1999, 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, and handlers will begin harvesting their fruit in early September. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting. Also, a 20-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, 1999, an assessment rate of $0.12 per 7/10 bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: August 17, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–21673 Filed 8–19–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV98–966–2 IFR]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Producer Field-Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that changed the handling requirements prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). The prior interim final rule exempted shipments of producer field-packed tomatoes from container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities. This rule exempts shipments of certain-sized producer field-packed tomatoes from a maximum size requirement specified in the handling regulation. These changes allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes. This facilitates the movement of Florida tomatoes and should ultimately improve returns to producers.

DATES: Effective October 10, 1999; comments received by October 19, 1999 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, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. 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: Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration