advance notice in writing of its intention and the facts and reasons therefor, and afford the grower an opportunity, either orally or in writing, to present opposing facts and reasons. The grower shall be informed of the committee's determination in writing and in a timely manner.

(e) To qualify for a Grower Tree Run Certificate, each such grower must notify the committee prior to the first shipment of tree run Florida citrus fruit of the grower's intent to ship such citrus, submit an application on forms supplied by the committee, and agree to other requirements as set forth in this section with respect to such shipments.

(f) The handling of tree run citrus under a Grower Tree Run Certificate shall be exempt from the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, under the following conditions:

(1) A grower may only ship up to 150 1⅗ bushel boxes per variety, per shipment.

(2) A grower may only ship up to 1,500 boxes per variety per season.

(3) This rule is applicable for the 2002–03 season only. Each grower certificate shall expire July 31, 2003.

(4) Each grower shall apply to the Citrus Administrative Committee and receive a Grower Tree Run Certificate prior to shipping their own tree run Florida citrus fruit.

(5) Each grower of citrus shipping under a Grower Tree Run Certificate shall supply the committee with reports on each shipment as requested by the committee, on forms supplied by the committee, providing the following information: The name and address of the grower, along with the grower's Grower Tree Run Certificate number; the legal description of the grove; the variety and amount of citrus shipped; the date the fruit was shipped; and the truck/trailer license number. A copy of the form will be completed for each shipment. One copy of the report will be forwarded by the grower to the committee office within 10 days after such shipment, and one copy of the report will accompany each shipment and be given to the Road Guard Station.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25430 Filed 10–2–02; 2:25 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV02–906–1 IFR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; 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 Texas Valley Citrus Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7⁄10-bushel carton 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. 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 August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 8, 2002. Comments received by December 6, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *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: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@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 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 on August 1, 2002, 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 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 decreases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7⁄10-bushel carton of oranges and grapefruit.

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 1999–2000 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 May 30, 2002, and unanimously recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.12 per 7⁄10-bushel carton of oranges and grapefruit. The Committee met again on August 28, 2002, and recommended a decreased assessment rate of $0.11, with no change to the previously approved budget of $1,226,022. Thirteen of the 14 Committee members and alternates acting as members voted in support of the $0.11 per 7⁄10-bushel carton decrease. One Committee member voted against the decrease. In comparison, last year's budgeted expenditures were $1,236,777. The assessment rate of $0.11 is $0.01 lower than the rate currently in effect. The Committee voted to reduce the assessment rate after determining that its reserve fund was higher than they believed necessary, and to lower handler assessment costs for 2002–03 by $100,000.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, 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 10 million 7⁄10-bushel cartons, which should provide $1,100,000 in assessment income. 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 $274,041) will be kept within the maximum of one fiscal period's expenses permitted by 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 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 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 2002–03 budget and those for subsequent fiscal periods will 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 410 producers of oranges and grapefruit in the production area and approximately 15 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 $5,000,000.

An updated Texas citrus industry profile shows that 6 of the 15 handlers (40 percent) shipped over 651,042 7⁄10-bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $7.68 per 7⁄10-bushel carton, these handlers could be considered large businesses under SBA's definition, and the remaining 9 handlers (60 percent) could be considered small businesses. Of the approximately 410 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, the majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7⁄10-bushel carton of oranges and grapefruit. The Committee recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.11 per 7⁄10-bushel carton of oranges and grapefruit. The recommended assessment rate of $0.11 is $0.01 lower than the current rate. The quantity of assessable oranges and grapefruit for the 2002–03 fiscal year is estimated at 10 million cartons. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The Committee recommended the $0.11 assessment rate to lower its operating reserve to $171,249. With a $0.12 assessment rate, the Committee projected its reserve on July 31, 2003, to be $271,249, and it thought that was higher than needed to administer the program. It also recommended the reduced rate to lower handler assessments by $100,000 during 2002–03.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $1,226,022, which included a decrease in the Mexican Fruit Fly program and an increase in the management and administration of the program. Budgeted expenses for the advertising program and the compliance program remained 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 higher assessment rate unchanged. However, it concluded that the reserves currently held by the Committee are higher than the Committee needs to administer the program.

The proposed assessment rate of $0.11 per 7⁄10-bushel carton of assessable oranges and grapefruit was determined by dividing the total budget by the 10 million 7⁄10-bushel cartons of oranges and grapefruit estimated for the 2002–03 fiscal period. The $0.11 rate will provide $1,100,000 in assessment income. The additional $126,022 to fund the Committees estimated expenses will come from the Committee's reserve, a refund of an overpayment from the Mexican Fruit Fly program, and interest income.

A review of historical information (October 1998 through May 2002) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2002–03 fiscal period could range, monthly, from $1.65 to $10.36 per 7⁄10-bushel carton of Texas oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 6.67 percent and 1.06 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, and may reduce the burden on producers. 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 August 28, 2002, 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 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.

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 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 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** because: (1) The 2002–03 fiscal period began on August 1, 2002, 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) this action decreases the assessment rate for assessable oranges and grapefruit beginning with the 2002–03 fiscal period; (3) handlers are aware of this action which was 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 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, 2002, an assessment rate of $0.11 per 7⁄10-bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25429 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–4 FR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit 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: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and