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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV95-906-2-IFR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Texas Valley Citrus Committee (TVCC) under M.O. No. 906 for the 1995-96 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1995, through July 31, 1996. Comments received by July 21, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Fax # (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 690-3670; or Belinda G. Garza, McAllen, Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682-2833.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. 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 interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Texas oranges and grapefruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit handled during the 1995-96 fiscal year, which begins August 1, 1995, and ends July 31, 1996. This interim final 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA),

the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR § 121.601) as those having annual receipts of 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 these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable oranges and grapefruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient

income to pay the TVCC's expected expenses.

The TVCC met on May 16, 1995, and unanimously recommended expenses of \$1,035,000 and an assessment rate of \$0.10 per 7/10 bushel carton. In comparison, budgeted expenses for the 1994-95 fiscal year were \$1,161,244, which is \$126,244 more than the \$1,035,000 recommended for the 1995-96 fiscal year. The assessment rate of \$0.10 is \$0.06 less than last season's assessment rate of \$0.16.

Major expense categories for the 1995-96 fiscal year include \$500,000 for advertising, \$180,000 for road guard station operation, and \$174,000 for the Mexican Fruit Fly support program.

Assessment income for the 1995-96 fiscal year is estimated at \$832,500 based upon anticipated fresh domestic shipments of 8,325,000 cartons of oranges and grapefruit. This, in addition to a withdrawal of \$193,500 from the TVCC's reserve fund, and \$9,000 estimated interest income should be adequate to cover budgeted expenses. In comparison, the assessment income for the 1994-95 fiscal year was estimated at \$960,000 based upon anticipated fresh domestic shipments of 6 million cartons of oranges and grapefruit.

Funds in the reserve at the end of the 1995-96 fiscal year are estimated at \$143,890. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC 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 action until 30 days after publication in the **Federal Register** because: (1) The TVCC needs to have sufficient funds to pay its expenses which are incurred on a continuous

basis; (2) the 1995-96 fiscal year for the TVCC begins August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year; (3) handlers are aware of this action which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-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 and orders, 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 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.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 906.235 is added to read as follows:

§ 906.235 Expenses and assessment rate.

Expenses of \$1,035,000 by the Texas Valley Citrus Committee are authorized and an assessment rate of \$0.10 per 7/10 bushel carton on assessable oranges and grapefruit is established for the 1995-96 fiscal year ending on July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-15110 Filed 6-20-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 920

[Docket No. FV95-920-1FR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes the pack requirements for kiwifruit packed in Size 45 containers under the Federal marketing order (order) for kiwifruit grown in California. This relaxation increases the size variation tolerance for all Size 45 containers of kiwifruit from 5 percent, by count, to 10 percent, by

count. This rule reduces grower and handler costs and enables more fruit to be packed and sold. Several editorial changes have been made to clarify the current kiwifruit handling requirements.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487-5901; or Charles Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, 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 (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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. 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 Administrator of the Agricultural Marketing Service (AMS) has