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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV04-906-2 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2004-05 and subsequent fiscal periods from \$0.14 to \$0.12 per $\frac{7}{10}$ -bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the 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.

DATES: November 24, 2004.

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 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, 2004, 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 continues in effect the action that decreased the assessment rate established for the Committee for the 2004-05 and subsequent fiscal periods from \$0.14 to \$0.12 per $\frac{7}{10}$ bushel carton or equivalent of oranges and grapefruit handled.

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 2003-04 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 21, 2004, and recommended 2004-05 expenditures of \$1,005,956 and an assessment rate of \$0.12 per $\frac{7}{10}$ -bushel carton or equivalent of oranges and grapefruit. Thirteen of the 14 Committee members and alternates acting as members voted in support of the \$0.02 decrease per $\frac{7}{10}$ -bushel carton or equivalent. One Committee member voted against the recommendation because he wanted the decrease to be larger. In comparison, last year's budgeted expenditures were \$1,322,506. The assessment rate of \$0.12 is \$0.02 lower than the rate previously in effect. The decrease in the assessment rate and budget is primarily due to lower promotion and Mexican Fruit Fly program budgets. The reduced assessment rate and budget will lower

handler costs by about \$180,000 and will keep the Committee's operating reserve at an acceptable level.

The major expenditures recommended by the Committee for the 2004–05 fiscal period include \$550,000 for promotion, \$204,000 for the Mexican Fruit Fly Support Program, \$123,679 for management and administration of the program, and \$72,777 for compliance. Budgeted expenses for these items in 2003–04 were \$800,000, \$279,000, \$119,929, and \$72,777, 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 fiscal period are estimated at 9 million $\frac{7}{10}$ -bushel cartons or equivalents, which should provide \$1,080,000 in assessment income. Income derived from handler assessments will be more than adequate to cover budgeted expenses. Funds in the reserve (currently \$175,000) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate 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 2004–05 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final 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 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 215 producers of oranges and grapefruit in the production area and approximately 13 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 2 of the 13 handlers (15 percent) could be considered large businesses under SBA's definition, and the remaining 11 handlers (85 percent) could be considered small businesses. Of the approximately 215 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 continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2004–05 and subsequent fiscal periods from \$0.14 to \$0.12 per $\frac{7}{10}$ -bushel carton or equivalent of oranges and grapefruit.

The Committee met on May 21, 2004, and recommended 2004–05 expenditures of \$1,005,956 and an assessment rate of \$0.12 per $\frac{7}{10}$ -bushel carton or equivalent of oranges and grapefruit. The assessment rate of \$0.12 is \$0.02 lower than the previous rate. As mentioned earlier, the quantity of assessable oranges and grapefruit for the 2004–05 fiscal period is estimated at 9 million $\frac{7}{10}$ -bushel cartons or equivalents. Thus, the \$0.12 assessment rate should provide \$1,080,000 in assessment income and be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2004–05 fiscal period include \$550,000 for promotion, \$204,000 for the Mexican Fruit Fly Support Program, \$123,679 for management and administration of the program, and \$72,777 for compliance. Budgeted expenses for these items in 2003–04 were \$800,000, \$279,000, \$119,929, and \$72,777, respectively.

The Committee recommended the \$0.12 assessment rate primarily because it reduced its promotion and Mexican

Fruit Fly programs. At a \$0.14 assessment rate, the Committee projected its reserve on July 31, 2005, to be \$401,160, which it believed was more than needed to administer the program. It also recommended the reduced assessment rate to lower handler costs by about \$180,000 during 2004–05.

The Committee reviewed and recommended 2004–05 expenditures of \$1,005,956, which included decreases in the promotion and Mexican Fruit Fly programs and an increase in the management and administration of the marketing order program. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. Alternative expenditure levels were discussed, based upon the relative need of the Mexican Fruit Fly program to the Texas citrus industry.

The assessment rate recommended by the Committee was derived by dividing the total recommended budget by the 9-million $\frac{7}{10}$ -bushel cartons of oranges and grapefruit estimated for the 2004–05 fiscal period. The \$0.12 rate will provide \$1,080,000 in assessment income. This is approximately \$74,044 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information from recent seasons (2000–2002) and preliminary information pertaining to the upcoming fiscal period indicates that the season average packinghouse door price for the 2004–05 fiscal period could likely range from \$1.40 to \$2.60 per $\frac{7}{10}$ -bushel carton of Texas oranges, and from \$2.15 to \$2.70 for Texas grapefruit. Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 8.6 and 4.6 percent for oranges and between 5.6 and 4.4 percent for grapefruit.

This action continues in effect the action that decreased 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 May 21, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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.

An interim final rule concerning this action was published in the **Federal Register** on July 29, 2004 (69 FR 45231). Copies of that rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 27, 2004, and no comments were received.

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/maob.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.

List of Subjects in 7 CFR Part 906

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

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 906 which was published at 69 FR 45231 on July 29, 2004, is adopted as a final rule without change.

Dated: October 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-23827 Filed 10-22-04; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922 and 923

[Docket No. FV04-922-1 FIR]

Decreased Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rates established for the Washington Apricot Marketing Committee and the Washington Cherry Marketing Committee (Committees) for the 2004-2005 and subsequent fiscal periods. This final rule decreases the assessment rates established for the Committees from \$3.00 to \$2.50 per ton for Washington apricots and from \$1.00 to \$0.75 per ton for Washington sweet cherries. The Committees are responsible for local administration of the marketing orders that regulate the handling of apricots and cherries grown in designated counties in Washington. Authorization to assess apricot and cherry handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for both marketing orders began April 1 and ends March 31. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: November 24, 2004.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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 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. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington, and Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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 orders now in effect, handlers in designated counties in Washington are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Washington apricots and Washington sweet cherries beginning April 1, 2004, 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 continues to decrease the assessment rates established for the Committees for the 2004-2005 and subsequent fiscal periods from \$3.00 to \$2.50 per ton for Washington apricots and from \$1.00 to \$0.75 per ton for Washington sweet cherries.

The orders provide authority for the Committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from