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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV04–906–1 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased 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 increased the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.11 to $0.14 per 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 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.

EFFECTIVE DATE: April 5, 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.''

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 August 1, 2003, 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 increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.11 to $0.14 per 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 2002–03 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 29, 2003, and unanimously recommended 2003–04 expenses of $1,222,506 for management, administration, compliance, a Mexican Fruit Fly program, and advertising and promotion. The Committee recommended that the assessment rate of $0.11 per 7/10-bushel carton continue for the 2003–04 fiscal period. The quantity of assessable citrus was estimated at 10 million 7/10-bushel cartons or equivalents.

The Committee met again on October 8, 2003, and unanimously recommended revised 2003–04 expenditures of $1,322,506 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. In comparison, last year's budgeted expenditures were $1,226,022. The assessment rate of $0.14 is $0.03

higher than the rate previously in effect. The Committee recommended the $0.14 assessment rate to cover the increased costs associated with implementing a more comprehensive Mexican Fruit Fly program, and a significant decrease in the assessable production estimate for the 2003–04 marketing season. At this meeting, the estimate of assessable citrus was reduced to 9 million 7/10-bushel cartons or equivalents.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $800,000 for advertising, $279,000 for the Mexican Fruit Fly program, $119,929 for management and administration of the marketing order program, and $72,777 for compliance. Budgeted expenses for these items in 2002–03 were $810,500, $179,000, $107,845, and $74,777, respectively.

As mentioned earlier, the Committee's fiscal period begins August 1. There are no citrus shipments out of the production area during the months of August, September, and part of October. Some shippers begin shipping during the latter part of October, but shipments are light until late November when heavier shipments begin. On October 31, 2003, the Committee's reserve totaled $16,230. The Committee needed to make significant advertising and promotion expenditures (about $60,000) during November.

The Committee believed that assessment billings at the lower $0.11 per 7/10-bushel carton rate would not be sufficient to cover all of its expenses. Assessing at the higher $0.14 rate sooner would enable the Committee to maintain its reserves at a satisfactory level and ensure that all of its obligations are met.

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 7/10-bushel cartons or equivalents, which should provide $1,260,000 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 $23,000) 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 2003–04 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 214 producers of oranges and grapefruit in the production area and approximately 16 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 16 handlers (38 percent) shipped over 588,235 7/10-bushel carton equivalents of oranges and grapefruit. Using an average f.o.b. price of $8.50 per 7/10-bushel carton, these handlers could be considered large businesses under SBA s definition, and the remaining 10 handlers (62 percent) could be considered small businesses. Of the approximately 214 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 to increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.11 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit.

The Committee met on May 29, 2003, and unanimously recommended 2003–04 expenses of $1,222,506 for management, administrative, compliance, a Mexican Fruit Fly program, and advertising and promotion. The Committee recommended that the assessment rate of $0.11 per 7/10-bushel carton continue for the 2003–04 fiscal period. The quantity of assessable citrus was estimated at 10 million 7/10-bushel cartons or equivalents.

The Committee met again on October 8, 2003, and unanimously recommended revised 2003–04 expenditures of $1,322,506 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. In comparison, last year's budgeted expenditures were $1,226,022. The assessment rate of $0.14 is $0.03 higher than the rate previously in effect. The Committee recommended the $0.14 assessment rate to cover the increased costs associated with the Committee's desire to implement a more comprehensive Mexican Fruit Fly program, and a significant decrease in the assessable production estimate for the 2003–04 marketing season. At this meeting, the estimate of assessable citrus was reduced to 9 million 7/10-bushel cartons or equivalents.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $800,000 for advertising, $279,000 for the Mexican Fruit Fly program, $119,929 for management and administration of the marketing order program, and $72,777 for compliance. Budgeted expenses for these items in 2002–03 were $810,500, $179,000, $107,845, and $74,777, respectively.

The Committee's fiscal period begins August 1. There are no citrus shipments out of the production area during the months of August, September, and part of October. Some shippers begin shipping during the latter part of October, but shipments are light until late November when heavier shipments begin. On October 31, 2003, the Committee's reserve totaled $16,230. The Committee needed to make significant advertising and promotion expenditures (about $60,000) during November.

The Committee believed that assessment billings at the lower $0.11 per 7/10-bushel carton rate would not be sufficient to cover all of its expenses. Assessing at the higher $0.14 rate sooner would enable the Committee to maintain its reserves at a satisfactory level and ensure that all of its obligations are met. Funds in the reserve (currently $23,000) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

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 7/10-bushel cartons or equivalents, which should provide $1,260,000 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.

In arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee. Alternative expenditure levels were discussed based upon the relative need of the Mexican Fruit Fly program to the Texas citrus industry.

The proposed assessment rate of $0.14 per 7/10-bushel carton of assessable oranges and grapefruit was then determined by dividing the total recommended budget by the 9 million 7/10-bushel cartons of oranges and grapefruit estimated for the 2003–04 fiscal period. The $0.14 rate will provide $1,260,00 in assessment income. The additional $62,506 to fund the Committee's estimated expenses will come from the Committee's reserve and interest income.

A review of historical information (October 1999 through May 2003) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2003–04 fiscal period could range monthly, from $0.26 to $6.41 per 7/10-bushel carton of Texas oranges and from $1.30 to $7.30 for Texas grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 2.2 and 53.8 percent for oranges and 1.9 to 10.8 percent for grapefruit.

This action continues to increase 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 meetings were widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29 and October 8, 2003, meetings were public meetings 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 November 25, 2003 (68 FR 66001). 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 January 26, 2004, and one comment opposing the assessment increase was received.

The commenter, a Texas citrus producer, stated that he opposes the increased assessment rate because he has lost money growing grapefruit. The commenter does not want to pay an assessment for grapefruit to the Committee.

Under the marketing order, assessments are collected from handlers of Texas citrus to cover order expenses. As stated previously in the regulatory flexibility analysis, some of the assessment costs may be passed on to producers by their handlers. However, USDA concluded that such costs are offset by the benefits derived by the operation of the marketing order.

The commenter went on to ask what could be done to remove themselves from this situation. USDA established the Texas citrus order at the request of producers to help the producers work together to solve marketing problems that they could not solve individually. However, procedures are available to modify, suspend, or terminate an order. Further, the Committee manager is available to discuss the operation of the marketing order with industry members.

Based on the foregoing, no changes are being made to the assessment rate established by the interim final 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.

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 68 FR 66001 on November 25, 2003, is adopted as a final rule without change.

Dated: February 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4860 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 99–017–3]

RIN 0579–AB13

Blood and Tissue Collection at Slaughtering and Rendering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing interstate