

Rules and Regulations

Federal Register

Vol. 72, No. 145

Monday, July 30, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AMS-FV-07-0088; FV07-905-1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; 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 Citrus Administrative Committee (Committee) for the 2007-08 and subsequent fiscal periods from \$0.008 to \$0.0072 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos handled. The Committee locally administers the marketing order which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Assessments upon Florida citrus handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 31, 2007. Comments received by September 28, 2007, 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 Internet: <http://www.regulations.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.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Doris.Jamieson@usda.gov or Christian.Nissen@usda.gov.

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 No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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, Florida citrus handlers 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, grapefruit, tangerines, and tangelos grown in Florida, beginning August 1, 2007, 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 2007-08 and subsequent fiscal periods from \$0.008 per 4/5 bushel carton to \$0.0072 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos grown in Florida.

The Florida citrus 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 oranges, grapefruit, tangerines, and tangelos. 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 2005-06 and subsequent fiscal periods, the Committee recommended, and USDA approved, a decreased 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, 2007, and unanimously recommended 2007-08 expenditures of \$275,000 and an assessment rate of \$0.0072 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos grown in Florida. In

comparison, last year's budgeted expenditures were \$241,000. The assessment rate of \$0.0072 is \$0.0008 lower than the rate currently in effect. This reduction was recommended because the Committee experienced an unanticipated increase in shipments for the 2006–07 fiscal period and had revenues greater than expenses. In addition, the industry has continued to recover from the hurricane damage sustained during the 2004–05 and 2005–06 seasons, which is expected to have a positive affect on total production.

The major expenditures recommended by the Committee for the 2007–08 fiscal year include \$112,000 for salaries, \$25,000 for Manifest Department-Florida Department of Agriculture and Customer Services (FDACS), \$17,800 for retirement plan, and \$14,550 for insurance and bonds. Budgeted expenses for these items in 2006–07 were \$110,000, \$25,000, \$17,250, and \$14,550, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, and tangelos. Florida citrus shipments for the year are estimated at 30 million 4/5 bushels which should provide \$216,000 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 approximately \$60,000) will be kept within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42(a).

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 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 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 2007–08 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.

There are approximately 8,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 55 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2005–06 season was approximately \$11.50 per 4/5-bushel carton, and total fresh shipments were approximately 29.1 million cartons. Using the average f.o.b. price, at least 70 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices reported by the National Agricultural Statistics Service, and the total number of Florida citrus producers, the average annual producer revenue is approximately \$55,540. Therefore, the majority of handlers and producers of Florida citrus may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent fiscal periods from \$0.008 to \$0.0072 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos. The Committee unanimously recommended 2007–08 expenditures of \$275,000 and an assessment rate of \$0.0072 per 4/5 bushel carton. The assessment rate of \$0.0072 is \$0.0008 lower than the 2006–07 rate. The quantity of assessable oranges,

grapefruit, tangerines, and tangelos for the 2007–08 season is estimated at 30 million 4/5 bushel cartons. Thus, the \$0.0072 rate should provide \$216,000 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.

The major expenditures recommended by the Committee for the 2007–08 fiscal year include \$112,000 for salaries, \$25,000 for Manifest Department-FDACS, \$17,800 for retirement plan, and \$14,550 for insurance and bonds. Budgeted expenses for these items in 2006–07 were \$110,000, \$25,000, \$17,250, and \$14,550, respectively.

The reduction in the assessment rate was recommended by the Committee as a result of an unanticipated increase in shipments for the 2006–07 fiscal period, which produced revenues that were greater than expenses. In addition, the industry has continued to recover from the hurricane damage sustained during the 2004–05 and 2005–06 seasons, which is expected to have a positive impact on production.

The Committee reviewed and unanimously recommended 2007–08 expenditures of \$275,000. Prior to arriving at this budget, the Committee considered information from various sources including the Committee's Budget Subcommittee. Alternative expenditure levels were discussed by this group, based on different estimates of assessable cartons and budget expenses. The assessment rate of \$0.0072 per 4/5 bushel carton of assessable oranges, grapefruit, tangerines, and tangelos was then determined by dividing the total recommended budget by the quantity of assessable Florida citrus, estimated at 30 million 4/5 bushel cartons for the 2007–08 season, taking into consideration the availability of reserve funds and interest income. This is approximately \$59,000 under anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2007–08 season could range between \$1.83 and \$9.76 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total producer revenue could range between .07 and .39 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 Florida citrus 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 29, 2007, 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 comments on this interim final rule, including 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 Florida citrus 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 AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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 2007–08 fiscal period begins August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida citrus handled

during such fiscal period; (2) this action decreases the assessment rate for assessable Florida citrus beginning with the 2007–08 fiscal year; (3) handlers are aware of this action, which was unanimously 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 905

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

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2007, an assessment rate of \$0.0072 per 4/5 bushel carton or equivalent is established for Florida citrus covered under the order.

Dated: July 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14621 Filed 7–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Docket No. : AMS–FV–07–0042; FV–07–702 IFR]

Mango Promotion, Research, and Information Order; Amendment to Term of Office Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends, on an interim basis, the term of office provision of the Mango Promotion, Research, and Information Order (Order) so that the term of office and term limit

for the two wholesaler and/or retailer positions of the National Mango Board (Board) be the same as that of other members. Specifically, the amendment modifies the term of office from one year to three years, and modifies the term limit for these positions from a maximum of three consecutive one-year terms to a maximum of two consecutive three-year terms in order to conform to the requirements of the Commodity Promotion, Research, and Information Act of 1996 Act.

DATES: Effective date: July 31, 2007. Comments must be submitted on or before August 29, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244-Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; Fax: (202) 205–2800. Comments, which should reference the docket number, title of action, date, and page number of this issue of the **Federal Register**, will be made available for public inspection at the above address during regular business hours and may also be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Kathie Birdsall, Marketing Specialist, or Sonia N. Jimenez, Chief, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244-Room 0634–S, Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free).

SUPPLEMENTARY INFORMATION: This rule is issued under the Mango Promotion, Research, and Information Order [7 CFR Part 1206]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the Department of Agriculture (Department) if they believe