



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 906**

[Doc. No. AMS-SC-17-0037; SC17-906-1 FR]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Texas Valley Citrus Committee (Committee) to decrease the assessment rate established for the 2017-18 and subsequent fiscal periods for oranges and grapefruit handled under Marketing Order 906. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated. This rule also makes administrative revisions to the subpart headings of the Order.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email:

Doris.Jamieson@ams.usda.gov or

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Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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. Part 906 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of oranges and grapefruit operating within the production area.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions

that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled "Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the Order now in effect, Texas orange and grapefruit handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable oranges and grapefruit beginning on August 1, 2017, and continue until amended, suspended, or terminated.

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.

The 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 are familiar with the Committee's needs and with the costs of 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.

This rule decreases the assessment rate from \$0.09, the rate that was established for the 2016-17 and subsequent fiscal periods, to \$0.02 per 7/10-bushel carton or equivalent of oranges and grapefruit handled for the

2017-18 and subsequent fiscal periods. The decrease reflects a reduction in expenses of more than \$595,000 from not funding the Mexican fruit fly control program.

The Committee met on August 8, 2017, and unanimously recommended 2017-18 expenditures of \$152,920 and an assessment rate of \$0.02 per 7/10-bushel carton or equivalent of oranges and grapefruit. The assessment rate of \$0.02 is \$0.07 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to reflect that they would not be funding the Mexican fruit fly control program, reducing their budget by more than \$595,000. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Of the total \$152,920 budgeted for the 2017-18 fiscal period, major expenditures recommended by the Committee include \$79,220 for management, \$50,000 for compliance, and \$23,700 for operating expenses. Compared to the previous fiscal year's budget of \$751,148, budgeted expenses for these items in 2016-17 were \$77,200, \$50,000, and \$23,700, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments, and the amount of funds available in the authorized reserve. Income derived from handler assessments calculated at \$150,000 (7.5 million 7/10-bushel cartons assessed at \$0.02 per carton), along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses of \$152,920. Funds in the reserve (currently \$282,572) will be kept within the maximum permitted by the Order (approximately one fiscal period's expenses as stated in § 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 will be 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 2017-18 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 businesses 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 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the 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 \$7,500,000 (13 CFR 121.201).

According to Committee data, the average price for Texas citrus during the 2015-16 season was approximately \$17.48 per box and total shipments were 7.5 million boxes. Using the average price and shipment information, the number of handlers (13), and assuming a normal distribution, the majority of handlers would have average annual receipts of greater than \$7,500,000. Thus, the majority of Texas citrus handlers may be classified as large business entities.

In addition, based on information from the National Agricultural Statistics Service, the weighted grower price for Texas citrus during the 2015-16 season was approximately \$14.64 per box. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of producers would have annual receipts of less than \$750,000. Thus, the majority of Texas citrus producers may be classified as small business entities.

This rule decreases the assessment rate collected from handlers for the 2017-18 and subsequent fiscal periods from \$0.09 to \$0.02 per 7/10-weight bushel carton or equivalent of Texas citrus. The Committee unanimously recommended 2017-18 expenditures of \$152,920 and an assessment rate of \$0.02 per 7/10-bushel carton or equivalent handled. The assessment rate of \$0.02 is \$0.07 lower than the 2016-17 rate. The quantity of assessable oranges and grapefruit for the 2017-18 fiscal period is estimated at 7.5 million 7/10-bushel cartons. Thus, the \$0.02 rate should provide \$150,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2017-18 year include \$79,220 for management, \$50,000 for compliance, and \$23,700 for operating expenses. Budgeted expenses for these items in 2016-17 were \$77,200, \$50,000, and \$23,700, respectively.

The Committee recommended decreasing the assessment rate to reflect that it would not be funding the Mexican fruit fly control program, reducing its budget by more than \$595,000.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee, and the Research Committee. Alternative expenditure levels were discussed by these committees who reviewed the relative value of various activities to the Texas citrus industry. These committees determined that all program activities were adequately funded and essential to the functionality of the Order, thus no alternate expenditure levels were deemed appropriate. Additionally, alternate assessment rates of \$0.01 and \$0.015 per 7/10 bushel-carton were discussed. However, it was determined that these lower assessment rates would draw too heavily from reserves, roughly \$78,000 and \$43,000, respectively. The proposed rate of \$0.02 per 7/10 bushel-carton would draw an anticipated \$2,800 from reserves, thereby leaving reserves intact for future needs.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price for the 2017-18 season should be approximately \$15.50 per 7/10-bushel carton or equivalent of oranges and grapefruit. Therefore, the estimated assessment revenue for the 2017-18 crop year

as a percentage of total grower revenue would be about 0.1 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.

The Committee's meeting was widely publicized throughout the Texas 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 August 8, 2017, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the *Federal Register* on December 4, 2017 (82 FR 57164). Copies of the proposed rule were also mailed or sent via facsimile to all Texas citrus handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 3, 2018, was provided for interested persons to respond to the proposal. Two comments were received, one in support of the change, and one comment

outside the scope of this action. One commenter in support of the action stated that the reduced rate is fair and continues to allow the Committee to pay its expenses. Administrative revisions to the subpart headings were included in the proposed rule. No comments were received on those changes. Accordingly, no changes will be made to the rule as proposed, based on the comments 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower 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 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.

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.

**[Subpart Redesignated as Subpart A]**

2. Redesignate "Subpart - Order Regulating Handling"  
as "Subpart A - Order Regulating Handling."

**[Subpart Redesignated as Subpart B and Amended]**

3. Redesignate "Subpart - Rules and Regulations" as  
subpart B and revise the heading to read as follows:

Subpart B - Administrative Requirements

4. Section 906.235 is revised to read as follows:  
§ 906.235 Assessment rate.

On and after August 1, 2017, an assessment rate of  
\$0.02 per 7/10-bushel carton or equivalent is established  
for oranges and grapefruit grown in the Lower Rio Grande  
Valley in Texas.

**[Subpart Redesignated as Subpart C]**

5. Redesignate "Subpart - Container and Pack Requirements" as "Subpart C - Container and Pack Requirements."

Dated: March 23, 2018.

**Bruce Summers,**

*Acting Administrator,*

*Agricultural Marketing Service.*

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