



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-SC-17-0074; SC18-905-1 PR]

Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Citrus Administrative Committee (Committee) to increase the assessment rate established for the 2017-18 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, 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 document 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>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, 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: Abigail.Campos@ams.usda.gov or Christian.Nissen@ams.usda.gov.

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, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905, (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 growers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 would be applicable to all assessable citrus for the 2017-18 crop year, 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 proposed rule would increase the assessment rate from \$0.009, the rate that was established for the 2013-14 and subsequent fiscal periods, to \$0.02 per 4/5-bushel carton of citrus handled for the 2017-2018 and subsequent fiscal periods. The proposed higher rate is a result of a smaller crop forecast due to hurricane damage and the need to cover Committee expenses.

The Committee met on June 29, 2017 and unanimously recommended both maintaining the 2013-14 assessment rate and new 2017-18 budgeted expenditures of \$132,000. Following the significant damage experienced by the industry from Hurricane Irma, the Committee held a second meeting on November 9, 2017, to discuss a revised crop estimate for 2017-18. Due to significant crop damage, the Committee estimates that assessable cartons for 2017-18 would be six million cartons, down from 8.6 million originally projected at a June 29, 2017, meeting. Given the reduced estimate, the Committee voted to increase the assessment rate from \$0.009 to \$0.02 per 4/5-bushel cartons of citrus to provide additional assessment income in order to meet the budgeted expenses of \$132,000 and draw less funds from the reserves. The assessment rate increase, along with the funds from reserves and interest income, should provide sufficient funds to cover anticipated expenses.

Of the total \$132,000 budgeted for the 2017-18 fiscal period, major expenditures recommended by the Committee include \$75,000 for salaries, \$10,000 for data collection and fresh shipments reporting, and \$9,000 for auditing &

accounting. Compared to the previous fiscal year's budget of \$140,600, budgeted expenses for these items were \$75,000, \$25,000, and \$9,200, respectively. The significant decrease in budgeted expenses for data collection and fresh shipment reporting stems from the development of a new computer program that better reports and extrapolates data, thus reducing reporting time and increasing efficiencies.

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 of \$120,000 (six million 4/5 bushel cartons assessed at \$0.02 per carton), along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses of \$132,000. Funds in the reserve (currently \$124,040) would be kept within the maximum permitted by § 905.42 and would not exceed the expenses of two fiscal periods.

The assessment rate proposed in this rule would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 proposed 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 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 500 producers of Florida citrus in the production area and approximately 20 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 \$7,500,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, for the 2016-17 season the weighted average f.o.b. price for Florida citrus was approximately \$15.20 per carton with total shipments of 12.6 million cartons. Using the number of handlers, and assuming a normal distribution, the majority of handlers would have average annual receipts of

more than \$7,500,000 (\$15.20 times 12.6 million equals \$191,520,000 divided by 20 handlers equals \$9,576,000 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2016-2017 season was around \$8.30 per carton of citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, and assuming a normal distribution, the average annual grower revenue is below \$750,000 (\$8.30 times 12.6 million cartons equals \$104,580,000 divided by 500 growers equals \$209,160 per grower). Thus, the majority of handlers Florida citrus may be classified as large entities, while the majority of growers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2017-18 and subsequent fiscal periods from \$0.009 to \$0.02 per 4/5-bushel carton of Florida citrus. The Committee unanimously recommended 2017-18 expenditures of \$132,000 and an assessment rate of \$0.02 per 4/5-bushel carton of citrus handled. The proposed assessment rate of \$0.02 is \$0.011 higher than the 2016-17 rate. The quantity of assessable citrus for the

2017-18 fiscal period is estimated at six million 4/5-bushel cartons. Thus, the \$0.02 rate should provide \$120,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2017-18 year include \$75,000 for salaries, \$10,000 for data collection, and \$9,000 for auditing and accounting. Budgeted expenses for these items in 2016-17 were \$75,000, \$25,000, and \$9,200, respectively.

As a result of damage from Hurricane Irma, the Committee estimates that the 2017-18 crop to be approximately six million 4/5-bushel cartons, down from the 8.6 million 4/5-bushel cartons estimated on June 29, 2017. Due to the decline in production, the current assessment rate would be insufficient to cover the Committee's anticipated expenditures and would further deplete the Committee's reserve fund. The assessment rate increase would generate additional revenue and would help offset the amount of reserves needed to fund the budget. Therefore, the Committee recommended increasing the assessment rate.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$0.009 per 4/5-bushel cartons of citrus. However, leaving the assessment unchanged would not generate sufficient revenue to meet the Committee's expenses for the 2017-18 budget of \$132,000 and would deplete the reserve. Based on estimated shipments, the recommended assessment rate of \$0.02 should provide \$120,000 in assessment income. The Committee determined assessment revenue, along with interest income and funds from the authorized reserves would be adequate to cover budgeted expenses for the 2017-18 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2017-18 season should be approximately \$21.38 per 4/5-bushel cartons of citrus. Therefore, the estimated assessment revenue for the 2017-18 fiscal period as a percentage of total grower revenue would be about 0.09 percent.

This proposed action would 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 would be offset by the benefits derived by the operation of the Order. In addition, the Committee's meetings were widely publicized throughout the Florida citrus industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 29, 2017, and November 9, 2017, meetings were public meetings 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 proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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 the OMB and assigned OMB No. 0581-0109 Generic Fruit Crops. No changes in those requirements would be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any 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.

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 proposed 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/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.

List of Subjects in 7 CFR Part 905

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

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

PART 905 - ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS
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, 2017, an assessment rate of \$0.02 per 4/5-bushel carton or equivalent is established for Florida citrus covered under the Order.

Dated: March 28, 2018

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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