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Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS-SC-24-0046]

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

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Texas Valley Citrus Committee (Committee) to increase the assessment rate established for the 2024-2025 and subsequent fiscal periods from \$0.03 to \$0.04 per 7/10-bushel carton or equivalent of oranges and grapefruit grown in Texas. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

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

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be sent to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public and can be viewed at: <https://www.regulations.gov>. 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: Delaney Fuhrmeister, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; telephone: (863) 324-3375 or email: Delaney.Fuhrmeister@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-8085, or email: Antoinette.Carter@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend 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. 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 area of production.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements and updates Executive Order 12866 and further directs agencies to solicit and consider input from a

wide range of affected and interested parties through a variety of means. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988 – Civil Justice Reform. Under 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 proposed assessment rate would be applicable to all assessable Texas citrus for the 2024-2025 fiscal period, 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 the U.S. Department of Agriculture (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 proposed rule would increase the assessment rate for Texas oranges and grapefruit handled under the Order from \$0.03 to \$0.04 per 7/10-bushel carton or equivalent for the 2024-2025 fiscal period and subsequent fiscal periods.

Sections 906.33 and 906.34 of the Order authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2022-23 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.03 per 7/10-bushel carton or equivalent of Texas citrus within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 18, 2024, and unanimously recommended 2024-2025 fiscal period expenditures of \$134,970 and an increased assessment rate of \$0.04 per 7/10-bushel carton or equivalent of Texas oranges and grapefruit handled for 2024-2025 fiscal periods. The budgeted expenditures remain unchanged compared to last year's recommended expenditures. The proposed assessment rate of \$0.04 is \$0.01 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to cover expenses for the current fiscal year and replenish reserves. The Committee estimates shipments for the 2024-2025 fiscal period to be around 4,000,000 7/10-bushel

cartons or equivalents, similar to the 3,976,000 7/10-bushel cartons or equivalents handled in the 2023-2024 fiscal period.

The major expenditures recommended by the Committee for the 2024-2025 fiscal period include \$66,220 for management expenses, \$50,000 for compliance, and \$18,750 for general administrative expenses, the same as budgeted for these items during the 2023-2024 fiscal period.

At the current assessment rate of \$0.03, the expected 4,000,000 7/10-bushel cartons or equivalents would generate \$120,000 in assessment revenue (4,000,000 7/10-bushel cartons or equivalents multiplied by \$0.03 assessment rate), which would not cover budgeted expenses. Further, shipments from the 2023-2024 fiscal period were approximately 4,000,000 7/10-bushel cartons or equivalents of citrus, which was well below the estimated crop of 5,000,000 7/10-bushel cartons or equivalents. The smaller crop forced the Committee to use the remainder of their reserves to help cover 2023-2024 fiscal period expenses. Consequently, the Committee recommended increasing the assessment rate to meet necessary expenses and restore reserves. By increasing the assessment rate from \$0.03 to \$0.04, assessment income would generate \$160,000 in assessment revenue (4,000,000 7/10-bushel cartons or equivalents multiplied by \$0.04 assessment rate). This amount should be appropriate to ensure the Committee has sufficient revenue to fully fund its recommended 2024-2025 budgeted expenditures and replenish the Committee's reserve funds.

The Committee derived the recommended assessment rate by reviewing anticipated expenses, the estimated volume of assessable Texas citrus, and the level of funds available in the financial reserve. Income generated from handler assessments should be sufficient to meet the Committee's estimated program expenditures of \$134,970. Funds available in the financial reserve (currently about \$0) would be kept

within the maximum permitted by the Order (approximately one fiscal period's expenses as authorized in § 906.35).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS 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 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS 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 2024-2025 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 17 handlers of Texas oranges and grapefruit subject to regulation under the Order and approximately 75 orange and grapefruit producers in the

regulated area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers as those having annual receipts equal to or less than \$4 million for orange producers (North American Industry Classification System (NAICS) code 111310), and \$4.25 million for other citrus producers (including grapefruit) (NAICS code 111320). Small agricultural service firms, including handlers, are defined as those whose annual receipts are equal to or less than \$34 million (NAICS code 115114) (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the producer prices for U.S. fresh oranges and grapefruit were \$11.63 and \$15.63 per carton, respectively. The prices for U.S. fresh oranges and grapefruit are used for this RFA because NASS does not publish fresh citrus prices for Texas. Based on data provided by the Committee, the number of orange and grapefruit 7/10-bushel cartons or equivalents shipped in the 2023-2024 season were 1,462,800 and 2,513,258, respectively.

Using the producer prices, shipment data, and the total number of Texas orange and grapefruit producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts of significantly less than the SBA threshold of \$4 million (\$11.63 multiplied by 1,462,800 cartons plus \$15.63 multiplied by 2,513,258 cartons equals \$112,564,041, divided by 75 producers equals \$750,594 per producer).

In addition, based on the NASS data, the average prices of fresh U.S. oranges and grapefruit handled for 2023-2024 were \$18.40 and \$23.05, respectively. Using the same shipment data from the Committee, the number of orange and grapefruit cartons shipped in the 2023-2024 season, and assuming a normal distribution, the majority of Texas orange and grapefruit handlers have average annual receipts of less than \$34 million (\$18.40 multiplied by 1,462,800 cartons plus \$23.05 multiplied by 2,513,258 cartons equals \$84,846,117, divided by 17 handlers equals \$4,990,948 per handler). Thus, the majority of Texas orange and grapefruit producers and handlers may be classified as

small entities.

This proposal would increase the assessment rate collected from handlers for the 2024-2025 fiscal period and subsequent fiscal periods from \$0.03 to \$0.04 per 7/10-bushel carton or equivalent of Texas oranges and grapefruit. The Committee unanimously recommended 2024-2025 expenditures of \$134,970 and an assessment rate of \$0.04 per 7/10-bushel carton or equivalent. The recommended assessment rate of \$0.04 is \$0.01 higher than the current assessment rate. The 2024-2025 crop year is estimated to be 4,000,000 7/10-bushel cartons or equivalents. The \$0.04 per 7/10-bushel carton or equivalent assessment rate should provide \$160,000 in assessment income (4,000,000 7/10-bushel cartons or equivalents multiplied by \$0.04 assessment rate). Income derived from handler assessments should be sufficient to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2024-25 fiscal period include \$66,220 for management expenses, \$50,000 for compliance, and \$18,750 for general administrative expenses. This is the same as budgeted for these items during the 2023-2024 fiscal period.

The Committee recommended increasing the assessment rate to meet necessary expenses and restore reserves. The reserves were depleted when shipments from the 2023-2024 fiscal period were approximately 4,000,000 7/10-bushel cartons or equivalents, which was well below the estimated crop of 5,000,000 7/10-bushel cartons or equivalents. The Committee estimates shipments for the 2024-2025 season to be around 4,000,000 7/10-bushel cartons or equivalents. Given the estimated number of shipments, the current assessment rate of \$0.03 would generate \$120,000 in assessment income (4,000,000 7/10-bushel cartons or equivalents multiplied by \$0.03 assessment rate), which would not cover budgeted expenses. By increasing the assessment rate from \$0.03 to \$0.04, assessment income would be \$160,000 (4,000,000 7/10-bushel cartons or

equivalents multiplied by \$0.04 assessment rate). This amount should provide sufficient funds to meet anticipated 2024-2025 expenses, while adding money to the financial reserve.

Prior to arriving at this budget and assessment rate recommendation, the Committee considered alternatives from the Committee staff during a discussion at the June 18, 2024, meeting. Staff prepared fifteen different proposed budgets with different combinations of assessment rates, estimated shipments, and alternate expenditure levels. The Committee determined maintaining expenses and estimated shipments of 4,000,000 7/10-bushel cartons or equivalent of oranges and grapefruit were representative of the 2024-2025 fiscal period, and an assessment rate of \$0.04 would cover expenditures and add funds to the financial reserve. Consequently, the other alternatives were rejected.

A review of historical and preliminary information pertaining to the 2024-2025 fiscal period indicates the average producer price for Texas oranges and grapefruit for the 2024-2025 season should be approximately \$14.15 per 7/10-bushel carton or equivalent. Therefore, utilizing the recommended assessment rate of \$0.04 per 7/10-bushel carton or equivalent, assessment revenue for the 2024 fiscal period as a percentage of total producer revenue would be approximately 0.2 percent ($\$0.04 \div \14.15×100).

This proposed rule would increase 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, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Texas citrus industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 18, 2024, 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 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 OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements would be necessary because of this proposed rule. 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 Texas 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.

AMS 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: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS

has determined that this proposed rule is consistent with, and would effectuate the purposes of, the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this proposed rule.

List of Subjects in 7 CFR Part 906

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

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 906 as follows:

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

1. The authority citation for part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2024, an assessment rate of \$0.04 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.