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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV01-905-3 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Decreased 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 decreased the assessment rate established for the Citrus Administrative Committee (Committee) for the 2001-02 and subsequent fiscal periods from \$0.0055 to \$0.005 per 4/5 bushel carton of Florida citrus handled. The Committee locally administers the marketing order which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Authorization to assess Florida citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 12, 2002.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; 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 No. 84 and 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." 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 Florida citrus beginning August 1, 2001, 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 decrease the assessment rate established for the Committee for the 2001-02 and subsequent fiscal periods from \$0.0055 to \$0.005 per 4/5 bushel carton or equivalent of citrus handled.

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 Florida citrus. 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 2000-01 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 August 29, 2001, and unanimously recommended 2001-02 expenditures of \$280,000 and an assessment rate of \$0.005 per 4/5 bushel carton of Florida citrus. In comparison, last year's budgeted expenditures were \$255,500. The assessment rate of \$0.005 is \$0.0005 lower than the rate previously in effect. Last fiscal year, Committee revenues exceeded expenses by \$38,500. Committee members agreed that the excess revenues should be used to reduce the assessment rate. The \$38,500 was added to the anticipated assessment revenue along with interest income for a revenue total of \$280,000 for the 2001-02 fiscal period.

The major expenditures recommended by the Committee for the 2001-02 fiscal period include \$121,300 for salaries, \$25,000 for Manifest USDA-FDACS, \$21,000 for insurance and bonds, \$18,750 for retirement plan, \$44,550 for miscellaneous and reserve, and \$10,000 for telephone. Other expenses for 2001-02 total \$39,400.

Budgeted expenses for these items in 2000–01 were \$118,300, \$36,000, \$19,900, \$18,500, \$12,450, and \$10,000 respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Florida citrus. Florida citrus shipments for the year are estimated at 48,000,000 cartons which should provide \$240,000 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 \$90,334) will be kept within the maximum permitted by the order (one half of one fiscal period's expenses; § 905.42).

The assessment rate 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 2001–02 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 11,000 producers of Florida citrus in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (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.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2000–01 season was approximately \$7.92 per $\frac{4}{5}$ bushel carton for all shipments, and the total fresh shipments for the 2000–01 season are estimated at 53.8 million $\frac{4}{5}$ bushel cartons of Florida citrus. Approximately 68 percent of the handlers handled 93 percent of Florida citrus shipments. Using information provided by the Committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, USDA believes that the majority of Florida citrus producers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from \$0.0055 to \$0.005 per $\frac{4}{5}$ bushel carton of Florida citrus. The Committee unanimously recommended 2001–02 expenditures of \$280,000 and an assessment rate of \$0.005 per $\frac{4}{5}$ bushel carton. The assessment rate of \$0.005 is \$0.0005 lower than the 2000–01 rate. The quantity of assessable Florida citrus for the 2001–02 fiscal period is estimated at 48 million $\frac{4}{5}$ bushel cartons. Thus, the \$0.005 rate should provide \$240,000 in assessment income. Assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover this year's expenses.

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$121,300 for salaries, \$25,000 for Manifest Department-FDACS, \$21,000 for insurance and bonds, \$18,750 for retirement plan, \$44,550 for miscellaneous and reserve, and \$10,000 for telephone. Budgeted expenses for these items in 2000–01 were \$118,300, \$36,000, \$19,900, \$18,500, \$12,450, and \$10,000, respectively.

Last fiscal year, Committee revenues exceeded expenses by \$38,500. Committee members agreed that the excess revenues should be used to reduce the assessment rate. The \$38,500 was added to the anticipated assessment revenue along with interest income for

a revenue total of \$280,000 for the 2001–02 fiscal period.

The Committee reviewed and unanimously recommended 2001–02 expenditures of \$280,000, which includes increases in some administrative costs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee, the Grapefruit Subcommittee, and the Regulatory Subcommittee. Alternative expenditure levels were discussed by these groups, based upon previous seasons and the general condition of the Florida citrus industry. The assessment rate of \$0.005 per $\frac{4}{5}$ bushel carton of assessable citrus was then determined by dividing the total recommended budget by the quantity of assessable citrus, estimated at 48,000,000 $\frac{4}{5}$ bushel cartons for the 2001–02 fiscal period. This rate is expected to generate \$240,000. This is \$40,000 below the 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 grower price for the 2001–02 season could range between \$4.60 and \$10.70 per $\frac{4}{5}$ bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between .04 and .1 percent.

This action continues to decrease 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 August 29, 2001, meeting was a public meeting 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 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.

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 9, 2001 (66 FR 56595). Copies of that rule were also mailed or sent via facsimile to all Florida citrus handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 8, 2002, and no comments were 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/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 905

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

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

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 66 FR 56595 on November 9, 2001, is adopted as a final rule without change.

Dated: March 7, 2002.

A.J. Yates,
Administrator, Agricultural Marketing Service.

[FR Doc. 02-5938 Filed 3-12-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV01-966-2 FIR]

Tomatoes Grown in Florida; Decreased 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 decreased the assessment rate established for the Florida Tomato Committee (Committee) for the 2001-02 and subsequent fiscal periods from \$0.025 to \$0.02 per 25-pound container of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato 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 12, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Winter Haven, FL 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; 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 No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes 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."

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 tomato 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 tomatoes

beginning August 1, 2001, 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 decrease the assessment rate established for the Committee for the 2001-02 and subsequent fiscal periods from \$0.025 to \$0.02 per 25-pound container of tomatoes handled.

The Florida tomato 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 of Florida tomatoes. 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 1999-2000 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 September 6, 2001, and unanimously recommended 2001-02 expenditures of \$1,666,650 and an assessment rate of \$0.02 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were \$1,910,000. The