Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV95-906-2-IFR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Texas Valley Citrus Committee (TVCC) under M.O. No. 906 for the 1995–96 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1995, through July 31, 1996. Comments received by July 21, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090– 6456. Fax # (202) 720–5698. 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.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690– 3670; or Belinda G. Garza, McAllen, Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Texas oranges and grapefruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit handled during the 1995–96 fiscal year, which begins August 1, 1995, and ends July 31, 1996. This interim final 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 the Secretary 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 requesting 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 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 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR § 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable oranges and grapefruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient