



## **Agricultural Marketing Service**

### **7 CFR Part 906**

**[Doc. No. AMS-SC-21-0065; SC21-906-1 PR]**

#### **Increased Assessment Rate for Texas Oranges and Grapefruit**

**AGENCY:** Agricultural Marketing Service, 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 2021-22 and subsequent fiscal periods. 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 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, Market Development 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 proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting 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,

Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: [Abigail.Campos@usda.gov](mailto:Abigail.Campos@usda.gov) or [Christian.Nissen@usda.gov](mailto:Christian.Nissen@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development 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@usda.gov](mailto:Richard.Lower@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 Agreement No. 121 and Marketing Order No. 906, both 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 comprises producers and handlers of oranges and grapefruit operating within the production area.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. 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. This 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 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 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 oranges and grapefruit for the 2021-22 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 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 from \$0.01 per 7/10-bushel carton or equivalent, the rate that was established for the 2018-19 and subsequent fiscal periods, to \$0.05 per 7/10-bushel carton or equivalent of oranges and grapefruit handled for the 2021-22 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee's needs and with costs for goods and services in their local area and are 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 had an opportunity to participate and provide input.

For the 2018-19 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$.01 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. That assessment rate continues to be in effect 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 July 14, 2021, and recommended 2021-22 expenditures of \$43,900 and an assessment rate of \$0.05 per 7/10-bushel carton or equivalent. In comparison, the previous fiscal period's budgeted expenditures were \$155,720. The assessment rate of \$0.05 is \$0.04 higher than the rate currently in effect. The Committee unanimously voted to increase the assessment rate due to the extensive tree damage from a freeze experienced in Texas occurring in February 2021. This February freeze decreased the 2020-21 production from an expected 7.5 million 7/10-bushel cartons to 3.1 million 7/10-bushel cartons. The Committee discussed how freeze damages caused a depletion of financial reserves for the 2020-21 fiscal period due to assessment income being lower than expected. Production will be further reduced during the upcoming fiscal period because of freeze damage to trees. Estimated production for the 2021-22 fiscal period has been reduced from 7.5 million 7/10-bushel cartons or equivalents to 1 million. At the current assessment rate, assessment income would equal \$10,000, an amount insufficient to cover the Committee's anticipated expenses of \$43,900. By

increasing the assessment rate by \$0.04, assessment income would be \$50,000. This amount should provide sufficient funds to meet fiscal period 2021-22 anticipated expenses.

Major expenditures recommended by the Committee for the 2021-22 fiscal period include \$20,000 for management expenses, \$13,900 for administrative expenses, and \$10,000 for compliance. Budgeted expenses for these items in the 2020-21 fiscal period were \$79,220, \$26,500, and \$50,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses and expected shipments of Texas oranges and grapefruit. Orange and grapefruit shipments for the 2021-22 fiscal period are estimated at 1,000,000 7/10-bushel cartons or equivalents, which should provide \$50,000 in assessment income (1,000,000 cartons multiplied by \$0.05). Income derived from handler assessments at the proposed rate, along with interest income, should be adequate to cover estimated program expenses of \$43,900. Funds in the reserve (currently about \$43,000) would be kept within the maximum permitted by § 906.35 of the Order (approximately one fiscal period's expenses).

The proposed assessment rate 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 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. 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 2021-22 budget and those 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 are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 119 producers of oranges and grapefruit in the production area and 14 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, the weighted average free-on-board price for Texas citrus for the 2019-20 fiscal period was approximately \$16.20 per carton, with total shipments of around 8.2 million cartons. Based on this information, total annual receipts of Texas citrus handlers in the 2019-20 fiscal period was approximately \$132,840,000 (\$16.20 multiplied by 8.2 million cartons equals \$132,840,000). Dividing by the number of citrus handlers infers average annual receipts of less than \$30 million (\$132,840,000 divided by 14 handlers equals \$9.5 million).

In addition, based on NASS data, the weighted average producer price for the 2019-20 fiscal period was around \$5.65 per carton of Texas citrus. Based on producer price, shipment data, and the total number of Texas citrus producers, the average annual producer revenue is below \$1,000,000 (\$5.65 multiplied by 8.2 million cartons equals \$46,330,000 divided by 119 producers equals approximately \$389,328).

This proposal would increase the assessment rate and collected from handlers for the 2021-22 and subsequent fiscal periods from \$0.01 per 7/10-bushel carton or equivalent to \$0.05 per 7/10-bushel carton or equivalent of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The Committee recommended 2021-22 expenditures of \$43,900 and an assessment rate of \$0.05 per 7/10-bushel carton. The proposed assessment rate of \$0.05 is \$0.04 higher than the current rate. The quantity of assessable Texas Citrus for the 2021-22 fiscal period is estimated at 1,000,000 7/10-bushel cartons. Thus, the \$0.05 rate should provide \$50,000 in assessment income (\$0.05 multiplied by 1,000,000 cartons), which should be adequate to cover budgeted expenses for the 2021-22 season.

Major expenditures recommended by the Committee for the 2021-22 fiscal period include \$20,000 for management expenses, \$13,900 for administrative expenses, and \$10,000 for compliance. Budgeted expenses for these items in 2020-21 were \$79,220, \$26,500, and \$50,000, respectively.

The Committee recommended increasing the assessment rate because of the extensive tree damage from the freeze in February 2021. At the current assessment rate of \$0.01 and with the 2021-22 crop estimated to be 1,000,000 7/10-bushel cartons, assessment income would equal \$10,000 (\$0.01 multiplied by 1,000,000 cartons), an amount insufficient to cover the Committee's anticipated expenditures of \$43,900. By increasing the assessment rate by \$0.04, assessment income would be approximately

\$50,000 (\$0.05 multiplied by 1,000,000 cartons). This amount should provide sufficient funds to meet 2021-22 anticipated expenses.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$0.01. However, leaving the assessment unchanged would not generate sufficient revenue to meet the Committee's expenses for the 2021-22 budget of \$43,900 and would diminish reserves. Therefore, the alternative was rejected.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for 2021-22 should be approximately \$5.42 per 7/10-bushel carton or equivalent of oranges and grapefruit. Therefore, the estimated assessment revenue for the 2021-22 fiscal period as a percentage of total producer revenue would be approximately 0.9 percent ( $\$50,000 \div \$5.42 \times 1,000,000$  cartons).

This action would increase the assessment obligation imposed on handlers. While assessments impose additional costs on handlers, costs are minimal and uniform on all handlers, and some portion of additional costs may be passed through to producers. However, these costs are expected to be offset by benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Texas citrus industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 14, 2021, 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 informational 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. 0581-0189 Fruit Crops. No changes in these requirements would be necessary as a result 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 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.

AMS is committed to complying with the E-Government Act, promoting the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services.

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.

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 matter.

#### **List of Subjects in 7 CFR Part 906**

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

For reasons set forth in the preamble, 7 CFR part 906 is proposed to be 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.

2. Section 906.235 is revised to read as follows:

**§ 906.235 Assessment rate.**

On and after August 1, 2021, an assessment rate of \$0.05 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.

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