



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 905**

[Doc. No. AMS-SC-18-0065; SC18-905-4 FR]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Citrus Administrative Committee (Committee) to decrease the assessment rate established for the 2018-19 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**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@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, 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 Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and 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 rule in conformance with Executive Orders 13563 and 13175. This 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 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 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 will be applicable to all assessable citrus for the 2018-19 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 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.

This rule decreases the assessment rate from \$0.02, the rate that was established for the 2017-18 and subsequent fiscal periods, to \$0.015 per 4/5-bushel carton of citrus for the 2018-19 and subsequent fiscal periods. Shipments from last season exceeded initial projections after Hurricane Irma, allowing the Committee to maintain their financial reserve. As the industry continues to recover from Hurricane Irma, the Committee estimates that

the 2018-19 Florida citrus crop will be around 8,250,000 regulated cartons, an increase of nearly one million cartons from last season. The anticipated increase in production prompted the Committee to recommend the reduction in the assessment rate.

The Committee met on July 17, 2018, and unanimously recommended 2018-19 expenditures of \$130,260 and an assessment rate of \$0.015 per 4/5-bushel carton of citrus. The major expenditures recommended by the Committee for the 2018-19 year include \$113,260 for management, \$9,000 for auditing, and \$4,000 for travel. Budgeted expenses for these items in 2017-18 were \$75,000, \$9,000, and \$4,200, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of 8.25 million 4/5-bushel cartons, and the amount of funds available in the authorized reserve. Income derived from handler assessments calculated at \$123,750 (8.25 million x \$0.015), along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses of \$130,260. Funds in the reserve are estimated to be \$147,500 and would be kept within the maximum permitted by the Order. As

stated in §905.42, the amount of the reserve is not to exceed two fiscal periods' expenses.

The assessment rate established in this rule 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 will 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 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 2018-19 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### **Final 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 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 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 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, the weighted average f.o.b. price for Florida citrus for the 2016-17 season was approximately \$15.20 per carton with total shipments of around 12.6 million cartons. Using the

number of handlers, and assuming a normal distribution, the majority of handlers 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 2016-17 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 Florida citrus handlers may be classified as large entities, while the majority of growers may be classified as small entities.

This rule decreases the assessment rate collected from handlers for the 2018-19 and subsequent fiscal periods from \$0.02 to \$0.015 per 4/5-bushel carton of citrus. The Committee unanimously recommended 2018-19 expenditures of \$130,260 and an assessment rate of \$0.015 per 4/5-bushel carton. The assessment rate of \$0.015 is \$0.005 lower than the 2017-18 rate. The quantity of assessable citrus for



the 2018-19 fiscal period is estimated at 8.25 million 4/5-bushel cartons. Thus, the \$0.015 rate should provide \$123,750 in assessment income (8.25 million x \$0.015). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve (currently \$147,500), should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2018-19 fiscal year include \$113,260 for management, \$9,000 for auditing, and \$4,000 for travel. Budgeted expenses for these items in 2017-18 were \$75,000, \$9,000, and \$4,200, respectively.

Shipments from last season exceeded initial projections after Hurricane Irma, allowing the Committee to maintain its financial reserve. The Committee estimates the 2018-19 Florida citrus crop will be around 8,250,000 regulated cartons, an increase of nearly one million cartons from last season. The Committee recommended the reduction in the assessment rate based on the anticipated increase in production.

Prior to arriving at this budget and assessment rate, the Committee considered information from the Executive Committee. Alternative expenditure levels and assessment

rates were discussed by the Executive Committee, based upon the relative value of various activities to the citrus industry. The Committee determined that all program activities were adequately funded and essential to the functionality of the Order, thus no alternative expenditure levels were deemed appropriate.

Based on these discussions and estimated shipments, the recommended assessment rate of \$0.015 should provide \$123,750 in assessment income. The Committee determined that assessment revenue, along with funds from reserves and interest income, should be adequate to cover budgeted expenses for the 2018-19 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price for the 2018-19 season should be approximately \$8.30 per 4/5-bushel carton of citrus. Therefore, the estimated assessment revenue for the 2018-19 crop year as a percentage of total grower revenue would be about 0.2 percent.

This action decreases 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 also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the Florida 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 17, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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 those requirements because of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule 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. As noted in the initial regulatory flexibility analysis, USDA has not identified

any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the *Federal Register* on October 2, 2018 (83 PR 49499). Copies of the proposed rule were also mailed or sent via facsimile to all Florida citrus handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending November 1, 2018, was provided for interested persons to respond to the proposal.

One comment was received in support of the regulation. The commenter stated that producers would benefit from this action and this reduction is a way to ensure production growth and reinvestment in citrus crops year after year. Three additional comments were also received but did not address the merits of this action. Accordingly, no changes will be made to the rule as proposed, based on the comments 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/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.

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 will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 905**

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

For the reasons set forth in the preamble, 7 CFR part 905 is 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, 2018, an assessment rate of \$0.015 per 4/5-bushel carton or equivalent is established for Florida citrus covered under the Order.

Dated: January 31, 2019.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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