Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC55

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Requests for Bids for Infant Formula Rebate Contracts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: At the time the current cost containment regulations were published in 1989, there were only minor differences in infant formula wholesale prices and few differences in types of infant formulas offered by manufacturers, i.e., milk-and soy-based infant formula. However, current wholesale prices vary considerably among manufacturers for similar formulas and several new infant formulas have emerged on the market over the last decade. Therefore, to reflect market changes in the infant formula industry and to optimize competition in the WIC Program's infant formula rebate contracts, this proposed rule would require WIC State agencies to award infant formula rebate contracts based on the lowest net price, allowing highest gross rebate as a basis of award only when retail prices of the different brands of infant formula vary, on average, by 5 percent or less. Additionally, this proposed rule would define the types and forms of infant formula that must be included in cost containment systems. It would also expand on conditions that must be met for the issuance of infant formulas not covered by rebate contracts.

DATES: To be assured of consideration, written comments on this rule must be received on or before September 14, 1998.

ADDRESSES: Comments may be mailed to Ronald J. Vogel, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5:00 p.m., Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, phone number (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget, and has been determined to be economically significant under Executive Order 12866, and major under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Chapter 8).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule, if implemented, will help ensure that WIC State agencies will be able to serve the maximum number of eligible applicants possible within their grant levels provided by the Federal government by removing current regulatory ambiguities that have resulted in the proliferation of protests of infant formula rebate contract awards. This rule further defines evaluation procedures for WIC State agencies' infant formula rebate contracts. While some WIC local agencies and WIC vendors may be small entities, the changes proposed by this rule will not affect them.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Dates'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private section of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is submitting for

public comment the changes in the information collection burden that would result from the adoption of the proposals in the rule.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Laura Oliven, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (a copy may also be sent to Deborah McIntosh at the address below). For further information, or for copies of the information collection, please contact Deborah McIntosh, Branch Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302–1594.

Comments and recommendations on the proposed information collection must be received by September 14, 1998. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Title: WIC Program Regulations.

OMB Number: 0584–0043.

Expiration Date: May 31, 1999.

Type of Request: Revision of a currently approved collection.

Abstract: This rule proposed would require documentation from a health care professional for any infant formula that is not covered by the State agency's infant formula rebate contract. Proposed documentation would include the following items: brand name of the formula prescribed; medical diagnosis warranting the prescribed formula; length of time the prescribed formula is medically required by the participant; and signature of the health care professional requesting the formula.

Respondents: Licensed health care professionals.

Estimated Number of Respondents: 16,000.

Estimated Number of Responses per Respondent: One.

Estimate of Burden: The proposed estimates of the reporting burden for information collections affected by this rule are detailed below.

Licensed health care professional	Respondents	Frequ.	Hrs/Resp	Total Hrs.
Proposed	16,000	1	0.03	533

Estimated Total Annual Burden on Respondents: 533 hours.

Background on Infant Formula Cost Containment

In response to rising food costs in the 1980's and the desire to use their food grants more efficiently, several WIC State agencies initiated infant formula rebate systems. In these early, voluntary infant formula rebate systems, a WIC State agency received rebate payments from one or more infant formula manufacturers based on: (1) the number of cans of their infant formula purchased with WIC funds by participants at retail outlets, or (2) the manufacturer's overall market share in the State.

At the time, infant formula expenditures represented almost 40 percent of all WIC food costs, making infant formula rebates an important cost-containment strategy. In fact, in fiscal year 1988, these rebate savings amounted to more than $30 million and grew to about $250 million in fiscal year 1989. Rebate savings escalated to $1.18 billion in fiscal year 1996, allowing the WIC Program to serve an additional 1.7 million participants. United States Department of Agriculture (The Department) figures show that nearly one out of every four WIC participants is supported with rebate savings. Without these savings, millions of low-income women, infants and children would not have the advantage of nutritious supplemental foods, nutrition education, and health care referrals provided by the WIC Program.

Legislative Background

Building on the success of voluntary State infant formula rebate systems, Public Law 100–460, the Department's fiscal year 1989 appropriations act required all WIC State agencies (except Indian State agencies with participation levels under 1,000) to explore the feasibility of cost-containment measures for infant formula and implement such measures where feasible. As a result of this mandatory legislative requirement, WIC State agencies with participation levels over 1,000 implemented infant formula cost-containment measures, primarily infant formula rebate systems. With the passage of the Child Nutrition and WIC Reauthorization Act of 1989 (section 123(a)(6) of Public Law 101–147), these cost containment requirements were made a permanent program feature. As a result, section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) WIC State agencies are required to implement a competitive bidding system for the procurement of infant formula, or any other infant formula cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system. As defined in section 17(b)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (b)(17)), competitive bidding is a process by which a WIC State agency selects a single source offering the lowest price, as determined by the submission of sealed bids, for the product(s) for which bids are sought.

Since the time when infant formula cost containment legislation was enacted, the infant formula industry has changed considerably. The manufacturers have changed and product lines have expanded. The Department believes that the current rebate regulations need to be updated to reflect these changes and should include provisions which accommodate future possible market dynamics. Therefore, this proposed rule addresses numerous major issues, discussed in detail below.

Lowest Net Price Cost of Infant Formula

Competition is a critical factor in achieving the lowest possible price for infant formula. Without adequate competition, manufacturers may offer lower rebate bids and the WIC Program could experience a substantial increase in food package costs. It is imperative, therefore, that fair and open competition in the awarding of infant formula rebate contracts be a major policy objective of the national WIC Program.

Current program regulations at 7 CFR section 246.16(k)(1) require WIC State agencies to evaluate infant formula rebate bids by one of two methods: (1) the lowest net wholesale cost, or (2) the highest rebate offered. However, because the current wholesale prices for various brands of infant formula differ considerably, manufacturers that have a significantly lower wholesale cost(s) are effectively placed at a competitive disadvantage in the bidding process if a WIC State agency evaluates bids based on the highest rebate offered. This competitive disadvantage was addressed by Congress in Public Law 104–180, the Department's fiscal year 1997 agriculture appropriations act and again in Public Law 105–86, the Department's fiscal year 1998 appropriations act. Both laws require State agencies to award infant formula rebate contracts on the basis of the lowest net price, unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent. ''Net price'' is defined in section 17(b)(20) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(20)) and in section 246.2 of the program regulations as the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered by the manufacturer.

When a WIC State agency evaluates bids based on the lowest net price per unit, the rebate offered by the manufacturer is subtracted from the manufacturer's wholesale price per unit. With this evaluation method, the manufacturer offering the lowest net price for infant formula wins the bid. This evaluation method recognizes the highest discount a manufacturer will provide.

New Requirement for Evaluating Rebate Bids

This proposed rule would require in section 246.16(k)(1)(iv) that WIC State agencies evaluate bids for infant formula rebate contracts on the basis of the lowest net price, with one exception. A WIC State agency may evaluate the bids received based on the highest rebate earned if the WIC State agency demonstrates to the satisfaction of the Food and Nutrition Service prior to the bid solicitation that the weighted average retail price for different brands of iron-fortified, milk-based infant formula in the State vary by 5 percent or less. The retail price must include WIC and non-WIC vendors in the State. In these cases, the retail prices of all manufacturer's formulas are comparable and consequently, highest rebate would yield approximately the same benefit as lowest net price.

Vendor Controls

There is concern among some WIC State agencies that if bids are evaluated by the lowest net price, the optimal rebate savings from the bid evaluation may not be realized by the WIC Program because the actual cost of infant formula depends on the vendor's retail price charged, less the rebate paid to the WIC State agency. For example, vendors who purchase one infant formula at a lower wholesale price than another do not invariably pass the savings on to their customers. As a result, such vendors charge a retail price for the infant formula that is approximately the same as for other formulas regardless of the wholesale cost. In such instances, the grocery store earns a larger profit on the formula with a lower wholesale cost. Consequently, some or all of the cost containment advantage of the rebate savings would be offset by the increased retail price. State agencies should be alert to these situations. The Department reminds State agencies that they may use WIC food price as a criteria when authorizing or reauthorizing vendor participation.

Definitions Pertaining to Infant Formula

Compliance with the Federal Food, Drug and Cosmetic Act (FDC Act) ensures that all infant formulas sold in the U.S. are safe, effective and properly labeled. The Food and Drug Administration (FDA), U.S. Department of Health and Human Services (DHHS), is the Federal agency with the exclusive legal authority to set the standards for infant formula and to monitor the production of infant formulas in this country. This proposed rule would define infant formula and exempt infant formula as those terms used in the FDC Act and the FDA's implementing regulations. By cross referencing the requirements in the FDC Act and regulations, any changes to these requirements will automatically apply to the WIC regulations.

Currently, the FDC Act defines infant formula as ''a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.'' The FDC Act defines exempt infant formula as an ''infant formula which is represented and labeled for use by an infant who (A) has an inborn error of metabolism, or a low birth weight, or (B) who otherwise has an unusual medical or dietary problem * * *'' and exempts such formulas from certain FDC Act requirements.

Types and Forms of Infant Formula Subject to Bid Requirement

Section 17(h)(8)(A) of the Child Nutrition Act of 1966 requires WIC State agencies to use a competitive bidding system, or any other system that yields savings equal or greater, with respect to the procurement of infant formula. Current regulations at section 246.16(k) expand on the law, requiring most WIC State agencies to ''implement infant formula cost containment measures for each of the types and forms of infant formulas prescribed to the majority of participants, i.e., milk and soy-based iron fortified, liquid concentrate formulas, or whatever other types and forms of formula routinely prescribed.''

As a result of the introduction of various infant formulas to the market, this proposed rule would clarify and expand what infant formulas must be included in each State agency's cost containment system.

First, this proposed rule also would change the basis by which rebate contracts are evaluated by State agencies. To simplify the bidding process, section 246.16(k)(1)(i) will require that the bid evaluation process for infant formula rebates use as the common basis of bids only those offered for iron-fortified milk-based infant formula which meet the nutritional requirements of a Food Package I or II formula (section 246.10(c)(1)(i) and (2)) and can be routinely issued to the majority of generally healthy, full-term infants. However, rebates will be required for all non-exempt formulas produced by the manufacturer. While product lines vary somewhat among manufacturers, all manufacturers offer formulas to accommodate infants who cannot tolerate lactose. Thus, for bidding purposes, the estimated number of infants shall include all infants the State agency expects to participate less those who are breastfeeding or prescribed exempt formulas.

This proposed rule would require each manufacturer awarded a WIC infant formula rebate contract to pay a rebate on any infant formula in its product line that is not an exempt formula that is issued by the WIC State agency. This rebate must yield the same percentage discount on the wholesale cost as the iron-fortified milk-based infant formula for which the manufacturer submitted a winning bid. For example, if the wholesale price for the iron-fortified milk-based infant formula is $2 per can and the rebate is $1.50 per can (75% of the wholesale

price), the rebate for any other non-exempt infant formula (e.g., soy-based formula) produced by the winning manufacturer would be 75 percent of the respective wholesale price of the other infant formula issued. The same infant formulas would be required to be included in any alternate cost containment system; the program regulations at section 246.16(k)(2) concerning the comparative method of implementing a cost containment system would continue to require the alternative system to cover the identical types and forms of infant formula as in the competitive bidding system.

This requirement does not obligate WIC State agencies to approve or issue all the types of infant formula covered in the contract. In fact, State agencies are encouraged to carefully limit the issuance of all alternative formulas under WIC Food Packages I and II to only those infants who have warranted nutritional needs that cannot be appropriately met by the iron-fortified milk-based infant formula upon which the bid was submitted. Limiting the issuance of formulas other than these is important to WIC State agencies for several reasons: manageability, ease of transition to another WIC contract formula manufacturer that has a different product line, and WIC vendor integrity.

Infant Formula Documentation Requirements

This proposed rule also would revise existing language in section 246.10 concerning a physician's determination of the need for a particular formula and documentation of that determination. Current WIC regulations state that a physician must authorize the issuance of any formula that does not meet the requirements of an iron-fortified infant formula as described in section 246.10(c)(1)(i). Examples of formulas that do not meet these requirements include low-iron infant formulas and many designed to meet the nutritional needs of infants with documented medical conditions. Questions have arisen about whether a medical prescription is required for documentation in these instances and whether someone other than a physician may make the determination in those State in which other health care professionals are authorized to write medical prescriptions. This proposed rule would make clear that the determination of the need for an alternate formula may be made by any health care professional authorized by State law to write medical prescriptions and that medical documentation must be issued by that health care professional before an alternate formula may be issued by WIC local agencies. This proposed rule would also strengthen medical documentation requirements. First, it would include all noncontract formulas among those formulas requiring medical documentation whether or not they comply with the requirements of an iron-fortified infant formula as described in section 246.10(c)(1)(i). This addition is intended to appropriately limit the issuance of noncontract infant formulas to those cases warranted for medical reasons so WIC State agencies can maximize their infant formula contract rebate savings to serve the greatest number of needy participants.

Second, the proposed rule would clarify that all exempt infant formulas (i.e., those designed for use with infants who have special dietary needs or serious medical conditions) must be supported with medical documentation. This requirement is not new; however, because this proposed rule introduces the term ''exempt infant formula,'' the Department believes it will be helpful to include this new term in connection with existing medical documentation requirements.

To summarize the medical documentation requirements, this proposed rule would require medical documentation for all noncontract infant formula. Medical documentation would continue to be required for low-iron infant formula and for all exempt infant formulas.

The Department encourages comments specifically regarding the requirement of medical documentation for all non-contract infant formula.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Accordingly, 7 CFR Part 246 is proposed to be amended as follows:

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In section 246.2, the definitions of *Exempt infant formula* and *Infant formula* are added in alphabetical order to read as follows:

§ 246.2 Definitions

* * * * *

Exempt infant formula means an infant formula that meets the requirements for an exempt formula under section 412(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 U.S.C. Parts 106 and 107.

* * * * *

Infant formula means infant formula as defined in section 201(z) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for infant formula under section 412 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321) and the regulations at 21 U.S.C. Part 106 and 107.

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3. In section 246.10:

a. Sentences 1 through 4 in paragraph (c)(1)(i) are revised.

b. The introductory text in paragraph (c)(3) is revised.

The revisions read as follows:

§ 246.10 Supplemental foods

* * * * *

(c) * * *

(1) *Food Package I—Infants 0 Through 3 Months.* (i) Iron-fortified infant formula, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 10 milligrams of iron per liter of formula at standard dilution which supplies 67 kilocalories per 100 milliliters; i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution. The State agency's contract brand of such iron-fortified formula shall be provided, unless a licensed health care professional authorized to write medical prescriptions under State law determines that the infant has a medical condition which dictates the use of other infant formula including, but not limited to, medical conditions which contraindicate the use of iron-fortified formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and allergies. Provision of formula, other than the State agency's contract brand iron-fortified formula, shall be supported with medical documentation. This documentation shall be kept in the participant's certification file and shall include the: brand name of the formula prescribed; medical diagnosis warranting the prescribed formula; length of time the prescribed formula is medically required by the participant; and signature of the health care

professional requesting the formula. Low-calorie formulas may not be prescribed solely for the purpose of managing body weight of infants. * * *

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(3) *Food Package III—Children/Women with Special Dietary Needs.* Children and women with special dietary needs may receive the following supplemental foods if a licensed health care professional, authorized to write medical prescriptions under State law, determines that the participant has a medical condition which precludes or restricts the use of conventional foods and necessitates the use of a formula including, but not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndrome and allergies. The supplemental foods described below are not authorized solely for the purpose of enhancing nutrient intake or managing body weight of children and women participants. Any formula issued shall be supported with a medical documentation. This documentation shall be kept in the participant's certification file and shall include at a minimum the: brand name of the formula prescribed; medical diagnosis warranting the prescription; length of time the prescribed formula is medically required by the participant; and signature of the health care professional requesting the formula.

* * * * *

4. In section 246.16:

a. The introductory text of paragraph (k) is revised.

b. Paragraph (k)(1) is revised.

c. The first sentence in paragraph (k)(2)(i)(A) is revised.

The revisions read as follows:

§ 246.16 Distribution of funds.

* * * * *

(k) *Requirements for infant formula procurement.* Unless granted a waiver under paragraph (l) of this section, all State agencies with retail food delivery systems (except Indian State agencies with 1000 or fewer participants in April of any fiscal year, which shall be exempted for the following fiscal year) shall implement an infant formula cost containment measure through one of the two methods cited below:

(1) *Single-supplier competitive method.* The single-supplier competitive method is a solicitation of sealed competitive bids for rebates from infant formula manufacturers, as follows:

(i) Invitations for bids shall be for each of the forms (e.g., concentrated liquid, powdered and ready-to-feed) of a single iron-fortified, milk-based infant formula that:

(A) Meets the requirements of an iron-fortified infant formula as described in § 246.10(c)(1)(i);

(B) Can be routinely issued to the majority of generally healthy, full-term infants.

(ii) State agencies shall solicit bids based on an estimated total amount of infant formula it expects to issue. Such estimates shall be based on the current number of infant participants, excluding those infants exclusively breastfed and those issued an exempt infant formula. The estimated total amount of infant formula shall be expressed in terms of the proportion of each form of formula expected to be issued (e.g., concentrated liquid, powdered and ready-to-feed).

(iii) Invitations for bid and contracts shall require the manufacturer to pay a rebate for any nonexempt infant formula the winning bidder produces that is issued by the State agency. The rebate for each of these other infant formulas shall yield the same percentage discount on the wholesale cost as the rebate for the infant formula described in paragraph (k)(1)(i) of this section.

(iv) State agencies shall award the contract(s) as follows:

(A) Based on the lowest net price for the infant formula described in paragraph (k)(1)(i) of this section; or

(B) Based on the highest rebate, provided the State agency demonstrates to the satisfaction of FNS before issuing the invitation for bids that the weighted average retail prices for different brands of infant formula in the State that meet the requirements of paragraph (k)(1)(i) of this section vary by 5 percent or less. The weighted average retail price must take into account the proportion of each infant formula the State agency expects to issue and both authorized food vendors and stores which do not participate in the program in the State.

(2) * * *

(i) *Food cost savings.*

(A) *Single Supplier Competitive System.* The State agency shall project food costs savings in the single-supplier competitive system based on the net wholesale price or highest rebate, as described in paragraph (k)(1)(v)(B) of this section, the total number of units of the specified types and forms of infant formula to be purchased under the program less the number of units of alternative brands anticipated to be prescribed by physicians and purchased by participants. * * *

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Dated: July 10, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 98–18957 Filed 7–15–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98–905–3 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.0035 to $0.00385 per 4/5 bushel carton established for the Citrus Administrative Committee (Committee) under Marketing Order No. 905 for the 1998–99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of citrus grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. 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: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720-2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington,