

# Rules and Regulations

Federal Register

Vol. 62, No. 34

Thursday, February 20, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 905 and 944

[Docket No. FV96-905-4 FIR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Import Regulations (Grapefruit); Relaxation of the Minimum Size Requirement for Red Grapefruit

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing regulations under the Florida citrus marketing order and grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit from  $3\frac{3}{16}$  inches in diameter (size 48) to  $3\frac{5}{16}$  inches in diameter (size 56). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change will enable handlers and importers to continue to ship size 56 red seedless grapefruit for the entire 1996-97 season.

**EFFECTIVE DATE:** March 24, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 720-5127, Fax # (202) 720-5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770,

Fax # (941) 299-5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, 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."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 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 request a modification of the order or to be exempted therefrom. A 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

The Committee met October 8, 1996, and unanimously recommended relaxing the red seedless grapefruit minimum size requirement from size 48 ( $3\frac{3}{16}$  inches diameter) to size 56 ( $3\frac{5}{16}$  inches diameter) for the period November 11, 1996, through November 9, 1997. This relaxation was effectuated by an interim final rule issued on November 27, 1996 (61 FR 64251). Absent this change, the size would have reverted back to size 48 ( $3\frac{3}{16}$  inches diameter), on November 11, 1996.

Section 905.52 of the order authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in Section 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and current shipments. According to both the National Agricultural Statistics Service and the Committee, production of red seedless grapefruit is expected to increase in comparison to last year

(1995–96). Both sources estimate an increase in production for this season (1996–97) of about 10 percent to 31.5 million boxes and about 3 percent to 29 million boxes, respectively. The Committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1996–97 season. The Committee believes that markets have been developed for size 56 and that they should continue to supply those markets.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels.

There are some exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day. Handlers may also ship unlimited gift packages of up to 2 standard packed cartons of fruit per day, which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule continues a relaxation in the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This final rule continues a relaxation the minimum size requirements for imported red seedless grapefruit to 3<sup>5</sup>/<sub>16</sub> inches in diameter (size 56) for the period November 11, 1996, through November 9, 1997, which reflects the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in

Section 905.306 (7 CFR 905.306) under Marketing Order No. 905.

During the last 5 years (1991–1995) imports to the United States of fresh grapefruit averaged less than 2 percent of total domestic consumption or less than 15,000 tons per year. Based on Departmental data, domestic consumption averaged 766,000 tons per year for that period. The major exporter of grapefruit to the United States was the Bahamas. The Bahamas shipped an average of 95 percent of all grapefruit imports to the United States during that time period. Other exporters of grapefruit to the United States included Mexico, Jamaica, Dominican Republic, Israel, and Thailand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this 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 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 100 handlers of Florida citrus who are subject to regulation under the marketing order, approximately 11,000 producers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of Florida citrus producers and grapefruit importers may be classified as small entities. The majority of Florida citrus handlers are estimated to be large entities.

Based on Committee shipping data and estimates for 1994–95, approximately 60 percent of all handlers handled 83 percent of Florida fresh domestic and export citrus shipments. The handlers included in this figure shipped 500,000 or more boxes of fresh citrus. The average price for Florida citrus was \$7.00 per <sup>4</sup>/<sub>5</sub> bushel box for all domestic shipments. The actual receipts of these handlers is estimated to

be higher as most of these handlers also ship to processing markets, which are not included in Committee data but would contribute to total handler receipts.

Section 905.52 of the order authorizes the establishment of minimum size regulations for Florida citrus, and section 8e of the Act requires that when such regulations are in effect for grapefruit, the same or comparable requirements be applied to imports.

This action continues a relaxation in the minimum size requirement established for Florida and imported red seedless grapefruit from size 48 (3<sup>9</sup>/<sub>16</sub> inches diameter) to size 56 (3<sup>5</sup>/<sub>16</sub> inches diameter) for the period November 11, 1996, through November 9, 1997. Absent this change, the size would have reverted back to size 48 (3<sup>9</sup>/<sub>16</sub> inches diameter), on November 11, 1996.

This rule is expected to have a positive impact on growers, handlers and importers, as it will permit the shipment of smaller size grapefruit, allowing the industry to meet market needs. There is a small established market for size 56 red seedless grapefruit and elimination of all shipments of this size would cause a hardship on the industry. The relaxed minimum size requirement will be applied to both small and large handlers and importers in the same way.

Based on shipment data from the Committee, total fresh Florida citrus shipments for interstate and export markets averaged 65,935 million <sup>4</sup>/<sub>5</sub> bushel boxes during the last 5 seasons (1991–1995). During this period, size 56 red seedless grapefruit comprised approximately 3 to 5 percent of total fresh shipments, or 2 to 3 million <sup>4</sup>/<sub>5</sub> bushel boxes. The average price for the last 5 seasons ranged from \$5.54 to \$5.68 per <sup>4</sup>/<sub>5</sub> bushel box for size 56 red seedless grapefruit. Thus, potential revenue from the sale of this fruit would range from \$11 million to \$17 million.

This relaxation is consistent with current and anticipated market demand for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels. The benefits of this rule are not expected to be disproportionately greater or less for small handlers, growers or importers than for larger entities.

The Committee discussed an alternative to this change, which was to not relax the minimum size requirement. This alternative would have prevented the industry from shipping fruit to current viable markets. While only a small amount of the crop is expected to be affected by relaxing the minimum size, the Committee believes that this relaxation will benefit

producers and handlers with smaller fruit this season. Thus, the Committee unanimously recommended this action.

This rule relaxes size requirements under the order and the grapefruit import regulations. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers or grapefruit importers. As with all Federal marketing order programs and companion import regulations, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. In addition to minimum size requirements, Florida and imported grapefruit is required to meet minimum grade requirements that are based on the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) which are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Additionally, the Department of Citrus for the State of Florida regulates citrus through the Citrus Fruit Laws, Chapter 601, Florida Citrus Code of 1949.

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 October 8, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 18 members, of which 9 are producers, 8 are handlers and 1 is a public member. The majority of Committee members represent small entities.

The interim final rule was issued on November 27, 1996, and published in the Federal Register (61 FR 64251, December 4, 1996), with an effective date of November 11, 1996. That rule amended §§ 905.306 and 944.106 of the rules and regulations in effect. That rule provided a 30-day comment period which ended January 3, 1997. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 64251,

December 4, 1996) will tend to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 905

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

##### 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

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

##### **PART 944—FRUITS; IMPORT REGULATIONS**

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 61 FR 64251 on December 4, 1996, is adopted as a final rule without change.

Dated: February 13, 1997.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-4113 Filed 2-19-97; 8:45 am]

BILLING CODE 3410-02-P

##### **7 CFR Part 966**

[Docket No. FV96-966-2 FIR]

#### **Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Single Layer and Two Layer Place Packed Tomatoes**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule providing an exemption to the pack and container requirements currently prescribed under the Florida tomato marketing order. The marketing order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). This rule exempts shipments of single layer and two layer place packed tomatoes from the container net weight requirements under the marketing order. This rule facilitates the movement of single layer and two layer place packed tomatoes and should improve returns to producers of Florida tomatoes.

**EFFECTIVE DATE:** March 24, 1997.

#### **FOR FURTHER INFORMATION CONTACT:**

Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, or FAX: (941) 299-5169; or Mark Slupek, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2830, or FAX: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, 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.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 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 request a modification of the order or to be exempted therefrom. A 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS)