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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV94–906–4FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Container and Container Pack Requirements and Rules and Regulations for Special Purpose Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule which revised container requirements and added a new container to those authorized for use by handlers of Texas citrus. This final rule continues a relaxation of pack requirements by requiring containers to have at least one-third Texas citrus by volume, rather than 50 percent citrus by count. This rule allows for more efficient use of containers and provides handlers with more flexibility in packing mixed packs.

EFFECTIVE DATE: April 14, 1995.

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, D.C. 20090–6456, telephone: (202) 720–2431; 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 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, hereinafter referred to as the order. The 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 rule has been reviewed under Executive Order 12778, 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 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 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in South 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.

Section 906.40(d) of the order authorizes the Secretary to fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of Texas oranges or grapefruit. Consistent with this authority, § 906.340 of the order's rules and regulations specifies the containers that may be used by Texas citrus handlers. These containers include cardboard cartons; mesh, poly, and vexar bags; and a number of master or bulk containers. Additionally, experimental containers may be approved by the Texas Valley Citrus Committee (committee), the agency responsible for local administration of the order. The handling of each lot of fruit in such test containers is subject to prior committee approval and is under the supervision of the committee.

The committee met on August 18, 1994, and unanimously recommended that the container requirements be revised. The recommended changes were to (1) revise the inside dimension specifications of two authorized master containers; (2) eliminate certain restrictions on the packing of mesh or poly bags; and (3) add a new fiberboard display bin to the list of approved containers. These changes were included in an interim final rule which became effective December 9, 1994 [59 FR 63691].

Two of the containers authorized for use prior to issuance of the interim final rule were (1) closed fiberboard cartons with inside dimensions of 20 inches in length by 13¼ inches in width by 9¾ to 10¾ inches in depth, and (2) fiberboard cribs with dimensions of 46 inches in length by 38 inches width by 24 inches high. These containers were authorized, respectively, in subparagraphs (iii) and (viii) of § 906.340(a)(1). They were used as master containers for shipping bags of fruit or for shipping fruit in bulk.

In recent seasons, handlers have used experimental containers with different dimensions than those authorized under § 906.340(a). The use of these containers has been successful, and, thus, the committee recommended that the dimensions specified for these two containers be revised to provide for more flexibility in packing Texas citrus. Specifically, subparagraph (iii) of § 906.340(a)(1) was revised to specify inside dimensions for closed fiberboard containers of 20 inches in length by 13¼ inches in width by 9¾ to 13 inches in depth. The revised dimensions for the fiberboard crib authorized by § 906.340(a)(1)(viii) are 46 to 47½ inches in length by 37 to 38 inches in width by 24 inches in depth. These revisions enable handlers to use a wider variety of containers without having to receive prior committee approval or to use such containers under the committee's supervision.

Section 906.340 authorizes a number of mesh, poly, and vexar bags that may be used in packing Texas citrus, and, prior to issuance of the interim final rule specified the master containers that can be used to ship these bags of fruit. For example, mesh type bags having a capacity of 10 pounds of fruit could only be packed in closed fiberboard cartons with inside dimensions of 20 inches by 13¼ inches by 9¾ to 10¾ inches. The committee recommended that such restrictions be eliminated to permit the industry to pack any authorized bag in any approved master container. This revision provides handlers with additional flexibility in packing oranges and grapefruit without having to follow the procedures governing the use of experimental containers. This rule maintains the revision to subparagraphs (iii), (iv), (vii), (viii), (ix), and (x) of § 906.340(a)(1). The committee's recommendation that the master containers utilized experimentally during the past few seasons become permanent was implemented in the interim final rule.

The committee's recommendation for a new fiberboard display bin was added to the list of approved containers and continues in effect. The new fiberboard display bin is being successfully used by the Florida citrus industry. The high-graphic bulk bin works as an in-store advertisement, increasing traffic and volume movement in the produce department. Because the bin is vented, the fruit holds up better during shipping. The bin can be shipped on pallets or ''slip'' boards. By adding these containers which were previously approved for experimental use to the permanent list of containers, there is no longer a requirement that each lot of fruit shipped in such containers receive prior approval from the committee.

The interim final rule added subparagraph (xi) to § 906.340(a)(1) to authorize the use of this container. Subparagraphs (ix), (x) and (xi) of § 906.340(a)(1) are redesignated, respectively, as subparagraphs (x), (xi) and (xii).

Section 906.42 authorizes the Secretary to modify, suspend, or terminate regulations based upon recommendations and information submitted by the committee, or other available information pursuant to §§ 906.34, 906.40, 906.45, or any combination thereof, in order to facilitate the handling of fruit.

Consistent with § 906.42, § 906.120 of the order's rules and regulations provides that oranges and/or grapefruit mixed with other types of fruit may be handled exempt from container and pack regulations, subject to certain conditions. One of those conditions prior to issuance of the interim final rule, was that the oranges and/or grapefruit constitute at least 50 percent by count of the contents of any container. The rule continues to allow handlers to pack ⅓ Texas citrus by volume rather than 50 percent by count as authorized in § 906.120(c)(4)(ii). This change provided handlers with the flexibility to pack a variety of products (e.g., pecans, jalapeno jelly, Washington apples, avocadoes, etc.) in the mixed packs. The committee recognized the need to specify that mixed packs contain at least ⅓ Texas citrus by volume. The committee believes that the change will allow the Texas citrus industry to improve producer returns.

The Department's opinion is that specifying ''Texas'' is redundant. As a result the Department did not include the term in the revision of § 906.120(c)(4)(ii).

The interim final rule concerning this action was published in the December 9, 1994, **Federal Register** [59 FR 63691], with a 30-day comment period ending January 9, 1995.

One comment was received from Ms. Darlene Barter, manager of the committee. Ms. Barter suggested that the revision to § 906.120(c)(4)(ii) in the interim final rule should specify ''Texas citrus.'' The Department's position is that the industry will be better served by stating ''grown in the production area'' rather than stating ''Texas citrus''. This will encourage handlers to ship oranges and grapefruit grown in the Lower Rio Grande Valley. While citrus is well defined in the order, the Department agrees that there is a need for additional clarity in the order's handling regulations. The best way to improve the clarity of the handling regulations is by stating ''grown in the production area''. While Ms. Barter's request is not accepted, a change in the regulation for clarity will be incorporated.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0581–0068 for Texas oranges and grapefruit.

There is no reporting burden on handlers of oranges and grapefruit who have been using experimental containers because no application is required.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—[AMENDED]

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.120 Fruit exempt from regulations.

2. Section 906.120(c)(4) is revised to read as follows:

* * * * *

(c) * * *

(4) Oranges and grapefruit grown in the production area may be handled exempt from container and pack regulations issued pursuant to § 906.40(d), under the following conditions:

(i) Such oranges and/or grapefruit grown in the production area are mixed with other types of fruit;

(ii) Such oranges and/or grapefruit grown in the production area constitute at least one-third by volume of the contents of any container, and any such container is not larger than a 7/10 bushel carton.

(iii) Such grapefruit grown in the production area grade at least U.S. No.

1, and such oranges grown in the production area grade at least U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot grading at least U.S. No.1).

* * * * *

Dated: March 9, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–6368 Filed 3–14–95; 8:45 am]

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Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 92–158–2]

Animal Welfare; Licensing and Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations to require dealers, exhibitors, and operators of auction sales who apply for license renewal to certify that, to the best of their knowledge and belief, they are in compliance with the regulations before a renewal is issued. We are also amending the regulations to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations, unless a variance has been granted that would allow the use of a computerized recordkeeping system that has been determined by the Administrator to meet the requirements of the regulations. These changes will help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records, thus promoting compliance with the Animal Welfare Act.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Debra E. Beasley, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Regulatory Enforcement and Animal Care, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR part 2 (referred to below as the regulations) pertain to the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act).

On December 28, 1993, we published in the **Federal Register** (58 FR 68559–68561, Docket No. 92–158–1) a proposal to amend the regulations to require that an applicant for license renewal certify that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to be in compliance upon issuance of a renewed license. In that same document, we also proposed to amend the regulations to require dealers and exhibitors to use Veterinary Services (VS) Form 18–5, ''Record of Dogs and Cats on Hand,'' and VS Form 18–6, ''Record of Disposition of Dogs and Cats,'' to make, keep, and maintain the information required by § 2.75(a)(1) of the regulations. We also proposed to add Animal and Plant Health Inspection Service (APHIS) form numbers in front of the VS form numbers that appear in several places in the regulations.

We solicited comments concerning our proposal for a 60-day comment period ending February 28, 1994. We received 11 comments by that date. The comments were submitted by a scientific society, animal breeders and distributors, humane and animal rights organizations, and private citizens. We carefully considered all of the comments we received. They are discussed below by topic.

Recordkeeping

Comment: The use of VS Forms 18–5 and 18–6 should remain optional since many facilities have accurate and efficient computerized recordkeeping systems. The forms that APHIS proposes to require are cumbersome, repetitive, and outdated and they do not provide spaces for all the information that is required by the regulations.

Response: We understand that many dealers and exhibitors, especially the larger operations, may be using computerized systems to make, keep, and maintain the records required by § 2.75(a)(1) of the regulations. Because it would be difficult for some dealers and exhibitors to switch over to a paper system, we have added a provision to the regulations that will enable a dealer or exhibitor to apply for a variance from the requirement to use VS Forms 18–5 and 18–6. If APHIS determines that a dealer or exhibitor is maintaining a computerized recordkeeping system that is adequate to keep the required information, a variance will be granted. An appeal procedure is also included for dealers or exhibitors who have had their request for a variance denied. The variance is an option only for those dealers and exhibitors who are using a computerized recordkeeping system; a variance will not be granted for alternative paper records. With regard to the complaint that the forms are outdated, APHIS is currently developing updated forms that reflect the requirements of the regulations. The updated forms will be distributed as supplies of the existing forms are depleted.

License Renewal

Comment: The proposed certification will be effective only if it supports APHIS in denying the license renewal applications of facilities not in compliance with the regulations and standards. Otherwise, the certification will not encourage compliance any more than the statement that applicants are currently required to sign.

Response: The regulations in § 2.5 state that a license will be renewed if, before the expiration of the license, the licensee files an application for license renewal, submits an annual report as required by § 2.7, and pays the required fees. There are no provisions in the regulations for denying a license renewal application as long as the licensee has complied with those requirements. However, as provided in § 2.1(f) of the regulations, a person who fails to comply with any provision of the Act or any provision of the regulations and standards shall be liable to having his or her license suspended or revoked.

Comment: If a facility was in the process of correcting a deficiency, it would be unable to certify that it is in compliance with the regulations and standards until the deficiency was completely corrected, which could take up to 30 days or even longer. Similarly, it would be difficult for a licensee with more than one facility to be certain that all his or her facilities were, at any given time, in compliance with the regulations and standards. The delays that could result from having to be certain that all the regulations and standards had been satisfied could cause a facility to miss its deadline for license renewal.

Response: If a licensee who had been cited for a deficiency was actively working to correct that deficiency, APHIS would be aware—or could be informed—that the licensee was addressing the problem and was making a good-faith effort to comply with the regulations. Such a situation would be no reason for a licensee to delay filing a license renewal application. With regard to the example of a licensee with more than one facility, it is the responsibility of a licensee, either personally or through his or her