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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

[Docket No. FV–95–906–1FR]

Oranges Grown in the Lower Rio Grande Valley in Texas and Imported Oranges; Suspension of Regulations for Domestic and Imported Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This rule suspends the handling regulations for oranges grown in the Lower Rio Grande Valley in Texas and the orange import regulations for the period July 1 through August 31 indefinitely. Currently, the effective period for both domestic and imported oranges is January 1 through December 31 of each year. The purpose of the suspension is to remove unnecessary handling regulations applicable to shipments of Texas oranges for the two month period July and August. The suspension of regulations applicable to imported oranges is necessary under section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT:

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or

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SUPPLEMENTARY INFORMATION: This suspension 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.''

This suspension is also issued pursuant to section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this suspension in conformance with Executive Order 12866.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This suspension is not intended to have retroactive effect. This action would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this suspension.

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. 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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. Import regulations issued under the Act are based on domestic grade, size, quality or maturity regulations established under Federal marketing orders.

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. In addition, there are approximately 20 importers of oranges subject to the requirements of the orange import requirements. Small agricultural service firms, which include handlers and importers, have been 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 these handlers, producers, and importers may be classified as small entities.

Oranges grown in the Lower Rio Grande Valley in Texas are subject to a minimum grade requirement of U.S. No. 2 and a minimum size requirement of 2$^{6}/_{16}$ inches in diameter. These requirements are in effect throughout the year on a continuous basis. The grade and size requirements for oranges grown in the Lower Rio Grande Valley in Texas are found in § 906.365 (7 CFR part 906) under the order. In addition, there are container and pack requirements found in § 906.340.

The Texas Valley Citrus Committee (Committee), the agency responsible for local administration of the order, meets prior to and during each season to review the handling regulations effective on a continuous basis for oranges regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings.

The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 9, 1995, and recommended by a 14 to 1 vote to relax the effective dates of the regulatory period for oranges from continuous to July 15 through August 31, 1995, for one year. Committee members limited the relaxation to one year because of concerns about imported oranges being in commercial channels after August 31, and the need to study the impact of such a change. The Committee acknowledged that the Texas orange requirements only need to be in effect when there are shipments of Texas oranges.

The Committee member who voted in opposition to the recommended change expressed concern about the potential impact imported oranges could have on the marketing of Texas oranges if substandard imports are in commercial channels when the Texas orange shipping season begins. However, with this rule the quality and size regulations for both Texas and imported oranges will be effective when the Texas shipping season begins and all fruit handled during the Texas shipping season will be subject to these requirements.

According to the Committee, Texas orange shipments typically begin in mid to late September and end in mid to late June. The Texas citrus industry has been in a vigorous recovery since the freeze of 1989. Prior to the freeze, shipments of oranges during the 1986/87 season totaled 1,334,548 cartons, shipments for the 1987/88 season totaled 2,240,181 cartons, and shipments for the 1988/89 season totaled 1,220,101 cartons. The 1989/90 shipping season ended in early January 1990 due to the harsh freeze. There was no commercial production or shipments of oranges during the 1990/91 season due to the December 1989 freeze. Orange shipments were minimal during the 1991/92 season as the recovery from the freeze of 1989 was still underway. Shipments for the 1992/93 season totaled approximately 688,000 cartons and shipments in the 1993/94 season approximated 833,000 cartons. The Committee expects the 1994/95 season to be an excellent year for orange production and sales. A review of 1986/87 to 1993/94 Texas orange shipment data revealed that the industry's shipping season consistently runs from September through the following June. This pattern was consistent in both pre-freeze and post-freeze seasons.

The Department reviewed the Committee's recommendation and determined that the quality and size requirements for Texas oranges should be suspended for the period July 1 through August 31, when there are no Texas orange shipments. The regulatory period would begin in September and end in June. There have been production changes over the last five to six seasons. However, as mentioned above, the change in production is a result of the freeze of 1989. The change in production has not resulted in a change in the industry's shipping pattern. The industry's shipping pattern consistently begins in September and ends in June. Although shipping patterns have not changed to date, in the future there may be changes in production. An annual evaluation will be conducted to determine the impact of the suspension on the Texas orange industry. If it is determined that the suspension has been deleterious to the Texas orange industry, necessary modifications will be made.

Minimum grade and size requirements for fresh oranges grown in Texas are in effect under § 906.365 (7 CFR 906.365). This action suspends the provisions of § 906.365 that apply to oranges during the months of July and August.

Since the grade and size requirements for Texas oranges will be effective during the entire Texas shipping season, this change should not have an adverse impact on the Texas orange industry.

Section 8e of the Act provides that when certain domestically produced commodities, including oranges, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e further provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the imports shall be subject to the requirements applicable to the commodity produced in the area with which the imported commodity is in most direct competition. The Secretary has determined that oranges imported into the United States are in most direct competition with oranges grown in Texas regulated under M.O. No. 906, and has found that the minimum grade and size requirements for imported oranges should be the same as those established for oranges under M.O. No. 906.

Imported oranges are subject to minimum grade and size requirements under § 944.312 (7 CFR part 944.312). These requirements are in effect on a continuous basis because domestic oranges are subject to the minimum grade and size requirements under Marketing Order No. 906 on a continuous basis. This rule suspends section 944.312(a) for the period July 1 through August 31 indefinitely so that it is effective September 1 through June 30, the same time period that is effective in the Texas orange regulation. According to the Department's Market News Branch, U.S. fresh orange imports during the 1993/94 season (beginning November 1) totaled 37.2 million pounds, up nearly 60 percent from the 1992/93 total. The increase is attributable to additional supplies from Australia as compared with the prior season. Australia's largest shipments arrive in July and August. By comparison, U.S. orange imports averaged 48.3 million pounds per season from 1988/89 through 1992/93, ranging from a low of nearly 19 million pounds to 137.3 million pounds in 1990/91 when domestic supplies were reduced following freeze damage to the California crop. In both 1992/93 and 1993/94, Australia was the principal source of fresh orange imports. Other sources of orange imports were the Dominican Republic, whose largest shipments arrive in August and September, Mexico, Israel, and Jamaica. In the 1992/93 season, Australia accounted for 10.1 million pounds, or 43 percent of U.S. fresh orange imports and 20.7 million pounds, or 56 percent of the U.S. total in 1993/94. Mexico is an important source of orange imports during the fall and winter. Imports from Israel are most active during the winter, with imports from other countries widely distributed throughout the season.

This rule relaxes import requirements because the orange import regulations will not be in effect during the months of July and August. This may result in reduced costs to importers. This action should not have an adverse impact on the Texas industry, however, because its shipping season does not begin until September. Domestic producers will not be significantly impacted, since all oranges in commercial channels during the domestic shipping season would be subject to the same minimum grade and size requirements.

The purpose of these changes is to assure that applicable quality requirements are in place only during such periods as needed by the Texas orange industry to provide a consistent supply of oranges of acceptable quality to fresh market outlets.

A proposed rule concerning this suspension was issued on April 18, 1995, and published in the **Federal Register** on April 24, 1995 (60 FR 60059). That rule provided a 20-day comment period which ended May 15, 1995. Six comments were received, four in support and two opposed to the proposed rule.

Comments received in favor of suspending the regulations for domestic and imported oranges as proposed were submitted by Mr. David M. Cain of the Citrus Board of South Australia (Citrus Board), Mr. N. Perry Hansen of Waverly Growers Cooperative, and Mr. Gregory P. Nelson on behalf of DNE World Fruit Sales and Bernard Egan & Company.

Mr. Cain states that the Citrus Board speaks on behalf of almost 900 South Australian citrus growers. It is his contention that the suspension of the regulation during the months of July and August, when under current arrangements, South Australian oranges arrive in the United States, will remove an unnecessary obstacle to their importation. He points out that there are no maximum decay level restrictions imposed on imports of U.S. oranges into Australia. Mr. Hansen supports the suspension, as proposed.

Mr. Nelson stated that, as president of a major exporter of Florida citrus and a major grower of Florida citrus, it is important that all import requirements in the United States be reasonable and fair. He further stated that he expects no adverse consequences on the domestic industry as a result of implementation of the proposed suspension.

Comments in opposition to the suspension of the orange regulations were submitted by Mr. Dwayne Bair, Chairman of the Texas Valley Citrus Commitee and Mr. Bobby F. McKown, Executive Vice President/CEO of Florida Citrus Mutual.

Mr. Bair states that the proposal is contrary to the Committee's recommendation which was to relax the Texas orange regulations for a single season rather than suspending them indefinitely as proposed. The Committee recommended relaxing the effective dates of the regulatory period for Texas oranges from July 15 through August 31, 1995, for one year only. As explained earlier in this rule, past and present production and shipping trends support suspending the orange regulations during the period July 1 through August 31 indefinitely. Also as previously stated an annual evaluation will be conducted to determine the impact of this suspension on the Texas orange industry.

Mr. McKown believes that any reduction in the grade, size, quality, or maturity requirements for fresh oranges, could pose long-term adverse consumer perceptions of the quality of fresh oranges offered for sale in the United States by Florida citrus growers. He further postulates that the suspension of the regulations will further depress returns to Florida citrus growers.

The Department currently has no information to support Mr. McKown's contention that the suspension will depress returns to Florida citrus growers. A review of the impact of the suspension will be conducted annually. If it is determined that the domestic industry has been negatively impacted, appropriate modifications will be proposed to the suspension.

This suspension reflects the Department's appraisal of the need to revise the dates of the regulatory period for imported oranges, as hereinafter set forth, to effectuate the declared policy of the Act.

After thoroughly analyzing the comments received and other available information the Department has concluded that its decision to suspend the orange regulations during the above mentioned period is appropriate.

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

Based on the above, the Administrator of the AMS has determined that this rule 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 suspension, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this suspension should be in effect on July 1, 1995. Also, a 20-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 906

Oranges, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

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

For the reasons set forth in the preamble, 7 CFR parts 906 and 944 are amended as follows:

PART 906—ORANGES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for both 7 CFR parts 906 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 906.365, a new paragraph (a)(7) is added, to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) * * *

(7) Beginning in 1995, this paragraph (a) is suspended each year from July 1 through August 31 of each year.

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PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.312, paragraph (a) is amended, by adding a sentence at the end of the paragraph to read as follows:

§ 944.312 Orange import regulation.

(a) * * * Effective July 1 through August 31 of each year this paragraph is suspended.

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Dated: June 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15858 Filed 6–26–95; 5:08 pm]

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7 CFR Parts 926 and 944

[Docket No. FV95–926–1FR]

Termination of Marketing Order 926 Covering Tokay Grapes Grown in San Joaquin County, California, and Tokay Grape Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for Tokay grapes grown in San Joaquin County, California, and the rules and regulations issued thereunder. For Tokay grapes imported into the United States, this order terminates the applicable Tokay grape import regulation under section 8e of the amended Agricultural Marketing Agreement Act of 1937 (Act). The Secretary of Agriculture has determined that the marketing order no longer tends to effectuate the declared policy of the Act because continuance of the program is no longer supported by growers.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order