

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)

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.

There are approximately 75 handlers of tomatoes who are subject to regulation under the order and approximately 90 producers of tomatoes in the regulated area. Small agricultural service firms, which include handlers, 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 handlers and producers of Florida tomatoes may be classified as small entities.

This rule finalizes an exemption for shipments of single layer and two layer place packed tomatoes from container net weight requirements currently specified under the order. Place packing requires a certain number of tomatoes to fill a container, making it difficult to meet established weight requirements. Tomatoes are packed in one or two layers, which some industry members believe is superior to the bulk container pack. Place packing is labor intensive, with most of the packing being done by hand, but it allows handlers to ship higher colored, more mature tomatoes. Place packed tomatoes, which are shipped from many domestic and foreign growing areas, currently maintain a strong market share.

This exemption is the same as granted for specialty packed red ripe tomatoes and yellow meated tomatoes. This exemption appears to be the most viable alternative to present requirements because it facilitates the use of place packing in Florida, and provides handlers an additional shipping option. Also, while we lack sufficient information necessary to quantify these benefits at this time, we believe that this exemption will be beneficial to the industry. After the industry operates under the relaxed requirements for a time, additional information will be available. Because the exemption and the packing techniques required affect both small and large handlers equally, both will benefit proportionally from the exemption. Therefore, the AMS has determined that this action will not

have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on October 29, 1996, and published in the Federal Register (61 FR 55729, October 29, 1996), with an effective date of October 30, 1996. That rule amended § 966.323 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended November 29, 1996. No comments were received.

Under the Florida tomato marketing order, tomatoes produced in the production area and shipped to fresh market channels are required to meet certain handling requirements. These requirements include minimum grade, size, and pack and container specifications.

This final rule revises § 966.323 paragraph (d) of the rules and regulations to make single layer and two layer place packed tomatoes exempt from the current net weight requirements. This exemption is the same as granted for specialty packed red ripe tomatoes and yellow meated tomatoes. The exemption is from net weight only. The tomatoes are still subject to all other provisions of the handling regulation, including established grade, size, pack, and inspection requirements. The Committee met September 5, 1996, and unanimously recommended this change.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. Section 966.323(a)(3)(i) of the order's rules and regulations defines the net weight container requirements. These requirements specify that all tomatoes be packed in containers of 10, 20, and 25 pound designated net weights. The net weight cannot be less than the designated weight or exceed the designated weight by more than two pounds.

Most tomatoes from Florida are shipped at the mature green stage, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. This procedure, by design, works well when packing to meet a specified weight.

In contrast, it is very difficult to pack to a specified weight when place packing in a single layer or two layer pack. Place packing a container requires a fixed number of tomatoes to fill the container. In place packing, the tomatoes are packed in layers, with the fill determined by the size of the tomato, dimensions of the container, and the way the tomatoes are positioned in the

box. To facilitate this type of pack, most handlers use plastic cells, cardboard partitions, or trays to position the tomatoes. The majority of place packed tomatoes are sold by count per container rather than by weight.

Throughout the harvesting season, the weight of equal size tomatoes may vary dramatically. When tomatoes are place packed into a container, the handler cannot add extra tomatoes if the container's net weight is light. Because the tomatoes are packed in layers, when a layer is complete there are no spaces for adding additional tomatoes.

Similarly, when the tomatoes are heavy, the handler cannot remove a tomato to meet a maximum weight requirement. Buyers expect a full pack with no spaces, and a missing tomato could result in a loose pack which could allow shifting or bruising during transport.

The Committee made this recommendation to overcome this problem and allow the industry to develop this market. This change allows the industry to place pack single layer and two layer packs exempt from the current net weight requirements. However, all other packs must continue to meet the requirements.

Single layer and two layer place packed tomatoes are common in today's markets. Many tomato growing areas within the United States utilize them, as do most shippers of Mexican tomatoes. Buyer demand for this type of container is well established. Tomatoes packed in single layer and two layer containers have a strong market share. Some Committee members stated that this pack provides a superior presentation of the tomatoes when compared to the bulk net weight container. Committee members believe that Florida tomato shippers can compete well in this market.

Another advantage of the place pack is that a more mature tomato can be shipped if desired. The Committee expressed interest in beginning to ship a higher colored, more mature tomato. Volume packing such a tomato could cause bruising or other damage. Place packing in single layer or two layer packs would prevent damage and help a mature tomato arrive at market in good condition.

The Committee is focusing on ways to continue to be competitive, develop new markets, and increase grower returns. The Committee believes this change will provide the industry with more flexibility and additional marketing opportunities.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic

marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. Since the Act does not authorize the imposition of pack or container requirements on imports, even when such requirements are in effect under a domestic marketing order, no change is necessary in the tomato import regulations as a result of this action.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other available information, it is found that finalizing, without change, the interim final rule as published in the Federal Register (61 FR 55729, October 29, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 61 FR 55729 on October 29, 1996, is adopted as a final rule without change.

Dated: February 12, 1997.

Robert C. Kenney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-4110 Filed 2-19-97; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 979

[Docket No. FV97-979-1 IFR]

Melons Grown in South Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on October 1, 1996. Comments received by March 24, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, FAX 202-720-5698. 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: Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833, FAX 210-682-5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202-720-9918; 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 2525-S, Washington, DC 20090-6456; telephone 202-720-2491; FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979, both as amended (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing 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 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1996, and continuing until amended, suspended, or terminated. 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. 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 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 the 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 32 producers of South Texas melons in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts 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 South Texas melon producers and handlers may be classified as small entities.

The melon marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting.